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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1969

No. 369

AMERICAN FARM LINES, *Appellant*

v.

BLACK BALL FREIGHT SERVICE, ET AL., *Appellees*

Appeal Docketed July 22, 1969

Probable Jurisdiction Noted October 27, 1969

No. 382

INTERSTATE COMMERCE COMMISSION, *Appellant*

v.

BLACK BALL FREIGHT SERVICE, ET AL., *Appellees*

Appeal Docketed July 24, 1969

Probable Jurisdiction Noted October 27, 1969

Docket Entries

Date		Date Order Judgment No.
1968		
Sept. 26	Filed Complaint—issued original Sum. & 4 copies S&C to US Marshal	1
	Filed Motion for Order to stay the going into effect of an Order of the ICC-4 copies to US Marshal	2
	Copy of Complaint to Court	
Sept. 30	Filed Motion of T.I.M.E. Freight, Inc. and Transcon Lines, Inc. to intervene-quad.	3
	Filed Affid. of service of notice of filing of Complaint, in quadruplicate	4
	Filed & Ent. Order permitting intervention of T.I.M.E. Freight, Inc., and Transcon Lines, Inc. (in quadruplicate) Counsel notified by card.	5
Oct. 1	Filed Joint Memorandum of the USA & ICC in opposition to temporary restraining Order. Copy to Court.	6
Oct. 2	Filed Pltfs' Memorandum in support of proposition that no bond is required, and Memo. concerning the question of exhaustion of administrative remedies.	7
Oct. 2	Ent. record hear. Pltfs' Motion for Order staying Order of ICC granted.	
Oct. 2	Filed Affid. of Jerome Biniasz, in quadruplicate	8
	Filed & Ent. Order staying going into effect of Order, in triplicate	9
	Filed Motion of Merchants Fast Motor Lines to intervene, in quadruplicate	10
	Filed & Ent. Order permitting intervention of Merchants Fast Motor Line, in quadruplicate	11

Oct. 4—Filed & Ent. Order designating U.S. Circuit Judge and U.S. Dist. Judges: Hon. Gilbert H. Jertberg, Hon. George H. Boldt., Hon. William N. Goodwin. 12

Oct. 4—Filed Affid. of service of certified copy of Order 13

Oct. 10—Filed Marshal's Ret. on Sum. 14a, b

Oct. 21—Filed Transcript of proceedings of 10/2/68, in triplicate 15a, b, c

Nov. 4—Filed Motion of various Railroad companies to intervene 16

Filed Notice of hearing Motion to intervene on Monday, 11/18/68 at 9:30 a.m. 17

Lodged Complaint to set aside etc: Order of ICC STRICKEN

Nov. 12—Filed Motion of Defts to stay further proceedings herein Copy to Court (quadruplicate) 18

Nov. 14—Filed & Ent. Order permitting intervention of various railroad companies. Counsel notified by card. 19

Nov. 15—Filed Reply to Defts' "Motion to stay further proceedings" in quadruplicate 20

Nov. 14—Filed Complaint to set aside & annul Order of ICC by Intervening Pltfs 21

Nov. 21—Filed Marshal's ret. on Order 22

Nov. 22—Copy of Motion of Defts to stay, etc. forwarded to Judges Jertberg & Goodwin.

Nov. 18—Copy of Reply to Defts' Motion to Judges Jertberg, Boldt & Goodwin

Dec. 27—Filed Motion of Ashworth Transfer, Inc. to intervene 23

Dec. 30—Filed & Ent. Order permitting the intervention of Ashworth Transfer Inc. as Party Plaintiff—Counsel notified by letter 24

Dec. 31—Filed Supplemental Complaint setting forth transactions or occurrences or events which have happened since the date the original complaint was filed herein. Copy to each of Judges Jertberg, Boldt & Goodwin 25

Dec. 31—Filed Motion for Order to Stay the Going into effect of an order of the ICC. Copy to Judges Jertberg, Boldt and Goodwin 26

Dec. 31—Received letter from James Henriot requesting motion to set for hearing *Monday 1/6/69*

1969

Jan. 2—Filed Affid. of service of notice in quadruplicate. Copy to Judges Jertberg, Boldt and Goodwin 27

Jan. 3—Filed Motion of Yellow Freight System, Inc., to intervene. 28

Jan. 6—Filed Joint Memorandum of US & ICC in opposition to temp. restraining Order 29

Jan. 6—Filed Motion of American Farm Lines to Intervene as Deft 30

Filed & Ent. Order Authorizing Intervention of American Farm Lines as Deft 31

Jan. 6—Filed & Ent. Order Permitting Intervention of Yellow Freight System Inc. as Party Plaintiff 32

Filed Motion of Intervenor American Farm Lines to Dismiss Pltfs' Application for Temporary Restraining Order 33

Filed Brief in Support of Intervenor American Farm Lines in support of Motion to Dismiss, with attachments 34

Filed *Answer* of Intervenor American Farm Lines 35

Ent. Record Hearing on Pltfs' Motion for an Order to Stay Going into Effect an Order of the ICC—Motion Granted

Filed & Ent. Order Staying Going into Effect of Order at 3:15 PM 36

Case set for hearing before the 3-Judge Court, 2:00 P.M., January 24, 1969 both to determine whether temporary restraining order should have been entered and to hear the cause on its merits

Filed Memorandum re ICC ruling in similar case involving Riss & Co. See letter of transmittal, 1/6/69, to 3 judges setting forth documents forwarded to them 37

Jan. 10—Filed Motion of Consolidated Copperstate Lines and Tri-state Motor Transit Co. to intervene as party Pltfs. 38

Jan. 13—Filed Pltfs' opening Brief. (2) Copy to Judge Boldt—copies to Judge Jertberg and Judge Goodwin by Mr. Adams. 39

Jan. 14—Filed *Joint Answer* of USA and ICC to initial Complaint filed 9/26/68 and Suppl. 40 Complaint filed 12/31/68.

Jan. 14—Filed & Ent. Order permitting intervention of Consol. Copperstate Lines & Tri-State 41

Jan. 14—Copy of Motion to Intervene. Order permitting intervention and Joint Answer of US & ICC to Judge Boldt, Judge Jertberg and Judge Goodwin

Counsel advised Order entered. (Mr. Adams, Mr. Wigger, Gordon et al)

Jan. 14—Filed Motion of United Transports Inc. to intervene 42

Jan. 15—Filed & Ent. Order permitting intervention of United Transports, Inc. as Pty Pltf. Card to Mr. Henriot, Mr. Wigger, Gordon, et al. 43

Jan. 16—Filed Transcript of proceedings of 1/6/69 in duplicate. Copy to Judge Boldt, Judge Jertberg, Judge Goodwin 44a

Jan. 17—Filed Index to Pltfs' opening Brief (3

Jan. 17—Filed Motion of Braswell Motor Lines, Inc., et al, to intervene as party Pltfs Lodged Order permitting intervention of Braswell Motor Lines 45

Jan. 20—Filed Joint Brief of US & ICC—Copy to each Judge by Mr. Cerra 46

Filed Memorandum Brief—Statement of the Case, of American Farm Lines 47

Jan. 20—Filed & Ent. Order permitting intervention of Braswell Motor Lines, Central Freight Lines, Central Express, Inc., Red Arrow Freight Lines, Inc., Brown Express, Inc., Alamo Express, Inc., J. H. Rose Truck Line, Inc., J. J. Willis Trucking Company, J. V. Harrison Truck Lines, Inc., Miller Truck Line Inc., H. S. Anderson Trucking Co., Central Forwarding, Inc., and Robertson Tank Lines, Inc. 48

Jan. 23—Filed Pltfs' Reply Brief. Copy to each Judge by Mr. Adams 49

Jan. 24—Filed cert. record of proceedings before ICC 50a-i

Jan. 24—Ent. record 3-Judge hearing had. Arguments presented. Matter submitted

Jan. 27—By Direction of Court, all counsel of record notified to serve & file proposed Findings, Conclusions & Order on or before February 14, 1969—(see letter in file) all judges notified

Feb. 13—Lodged proposed Findings of Fact and Conclusions of law in quadruplicate (ICC)

Lodged proposed Judgment in quadruplicate (ICC)

Feb. 14—Lodged Pltfs' proposed Findings of Fact and Conclusions of Law in quadruplicate.

Copy of all proposed Findings & Concl. & Jdmt to each Judge

March 26—Filed & Ent. Opinion-Findings of Fact and Conclusions of Law 51

Filed & Ent. Jdmt: Each of Temporary Authorities issued by ICC to intervening Deft. American Farm Lines on 9/3/68 and 12/19/68 be held and adjudged null and void; Stay Order as to each of sd Temporary Authorities is cont'd in effect until further Order of this Court. Copy to all Counsel (10) 52

May 23—Filed Notice of Appeal by American Farm Lines, intervening Deft. Counsel advised by letter (Copy of Notice to all parties by Appellant) Copy to each Judge. 53

May 26—Filed Notice of Appeal to the Supreme Court by Interstate Commerce commission. Counsel advised by letter (Copy of Notice to all parties by Appellant) Copy to each Judge. 54

June 20—Filed Motion of American Farm Lines for a Stay pending Appeal, in quadruplicate. Copy to each Judge 55

Filed Certificate of service of Motion 56

June 23—Filed Memorandum for ICC supporting Motion of American Farm Lines for Stay, in quadruplicate. Copy to each Judge. 57

June 26—Filed Memorandum to the Court and request to fix date for submission of Memorandum in quadruplicate. Copy to each Judge. (American Farm Lines) 58

June 27—Filed letter from Mr. Kahn to Clerk advising United States has not joined in Appeal 59

June 27—Filed Memo. to Court re date for submission of opposing Memorandum to Intervening Deft's Motion to Stay. 60

June 30—Filed telegraphic message from Mr. Kahn to Judges to clarify letter of 6/25 61

June 30—Record on Appeal forwarded to Clerk, Supreme Court, Wash. D. C. in 2 cartons. #369; 382 61

June 30—Filed & Ent. Order fixing time for Pltfs and intervening Pltfs to file response to Motion of American Farm Lines for stay pending Appeal. Counsel advised by Mr. Henriot at Court's direction. 62

July 2—Filed Certificate of service of Order fixing time, by Mr. Henriot 63

July 3—Doc. #50 (ICC Record of Proceedings) air mailed to Clerk, Supreme Court, Wash. D. C.

July 7—Filed Certificate of service of Memorandum by American Farm Lines 64

July 9—Filed Reply of intervening Rail Carrier Pltfs to Motions for Stay pending Appeal in quadruplicate. Copy to each Judge. 65

July 14—Filed Reply of Pltfs & Pltf. Intervenors to Motion of American Farm Lines for a Stay pending Appeal, in quadruplicate. Copy to Each Judge. 66

July 16—Recd Ltr from counsel for AFL to Judge Boldt advising AFL will not file an Opposing Memorandum (Copy to each Judge)

July 22—Ent. Minute Order denying Motion of Intervening Deft. American Farm Lines for Stay pending Appeal. Copy to all counsel, and each Judge.

July 29—Suppl. Record on Appeal forwarded to Supreme Court, Wash. D. C.

Aug. 21—Filed & Ent. Order denying Motion of American Farm Lines for a Stay pending Appeal. Conformed copy to each Judge. Counsel notified. 67

Aug. 28—Filed copy of letter from Mr. Davis, Clerk, Supreme Court, to Mr. Califano, Jr. advising that Order granting Stay was granted 8/21/69 by Mr. Justice Douglas. 68

Nov. 3—Filed copies of notice advising one hour allotted for oral argument, ICC & American Farm Lines 69a, b

Notice of filing of the documents described below was published in the Federal Register of 5/28/68.

7

No. MC 129908 TA filed May 17, 1968

Applicant: AMERICAN FARM LINES, 641 North Meridian, Oklahoma City, Okla. 73107

Applicant's representative: WESLEY L. JOHNSON, (same address as above)

Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities including classes A and B explosives*, restricted to traffic moving on Government Bill of Lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and on the other, points in Washington, California, Nevada and Arizona, for 180 days. SUPPORTING SHIPPER: Department of the Army, Office of Judge Advocate General, Washington, D. C., 20310. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Rm. 350 Amer. Gen. Bldg., 210 N.W. Sixth, Oklahoma City, Okla. 74102.

Notice of filing of the documents described below was published in the Federal Register of June 8, 1968.

9-A

No. MC 129908 TA (CORRECTION), filed May 17, 1968, published Federal Register, issue of May 28, 1968, and republished as corrected this issue.

Applicant: AMERICAN FARM LINES, 641 North Meridian, Oklahoma City, Okla. 73107

Applicant's representative: WESLEY L. JOHNSON, (same address as above)

Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General*

commodities including classes A and B explosives, restricted to traffic moving on Government Bills of Lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah, and Arizona, for 180 days. NOTE: The purpose of this republication is to add the State of Utah to the States proposed to be served, inadvertently omitted from previous publication. SUPPORTING SHIPPER: Department of the Army, Office of Judge Advocate General, Washington, D. C. 20310. SEND PROTESTS TO: C. E. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Rm. 350 Amer. Gen. Bldg., 210 N.W. Sixth, Oklahoma City, Okla. 73102.

Headquarters
Department of The Army
Office of The Judge Advocate General
Washington, D. C. 20310

30 April 1968

Mr. Howard McCormack
General Manager
American Farm Lines Co-op
Oklahoma City, OK 73107

Re: Application of American Farm Lines, Inc., to Transport General Commodities Including Class A and B Explosives

Dear Mr. McCormack:

As duly authorized counsel for the Secretary of the Army and the Department of Defense, I have been asked to reply to your request for the Department of Defense support in connection with your application before the Interstate Commerce Commission to transport general commodities, including Class A and B explosives.

The Department of Defense has used the services of American Farm Lines, Inc., to transport more than 1,200 shipments since December 1966. Your service has been excellent in every respect. In fact, the Department of Defense has found American Farm Lines' service to be fast, efficient, responsive, and economical. Under the circumstances, the Department of Defense is desirous of being able to continue to use the services of American Farm Lines. In many instances the Department of Defense receives direct through service from American Farm Lines, Inc. which is desirable. In other words, the Department of Defense would like to retain this transportation source which has been available to it. However, the Department of Defense is not in a position to state that there would be insufficient or inadequate service without American Farm Lines.

Should an oral hearing be held on your application, the Department of Defense will present an authorized and qualified witness to testify to the above facts.

Sincerely yours,

CURTIS L. WAGNER, JR.
Chief, Regulatory Law Division

Mr. Wagner/svm 30/ Apr 68

DEPARTMENT OF THE ARMY
Headquarters
Military Traffic Management and Terminal Service
Washington, D. C. 20315

10 May 1969

Mr. Bill D. Gardner
Riss & Company, Inc.
903 Grand Avenue
Kansas City, Missouri 64106

Dear Mr. Gardner:

This is in reply to your letter of 30 April 1968 concerning American Farm Lines proposed application to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity.

The position of the Department of Defense (DoD) in this matter is outlined for your information. The Department of Defense has utilized the transportation services of farm cooperatives in the movement of military traffic since the latter part of 1966, and such services have been satisfactory, fast, and economical. Consequently, the DoD would like to retain this transportation source. However, the DoD is not in a position to state that there would be insufficient or inadequate service without American Farm Lines.

The American Farm Lines was advised of the above position in a letter from the Office of The Judge Advocate General, Department of the Army, dated 30 April 1968.

It is hoped that this will clarify any misunderstandings which may exist with respect to the DoD's position in this matter.

Sincerely yours,

WOODROW W. ATKINS
Colonel, JAGC
Staff Judge Advocate

[SEAL]

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D. C. 20310

U 672 15 May 1968
JAGU 1968/9695

Temporary Authority Board
Interstate Commerce Commission
Washington, D. C. 20423

Re: American Farm Lines Application for 180 Days Temporary Authority Over Irregular Routes (General Commodities and Class A and Class B Explosives)

Gentlemen:

As duly authorized counsel for the Secretary of the Army and the Department of Defense, I wish to call the Commission's attention to the following facts in connection with the above-entitled application and the desirability of the immediate issuance of temporary authority to American Farm Lines for the transportation of general commodities and Class A and Class B explosives from areas in the Middle West to the west coast and in reverse direction.

The Department of Defense is constantly looking for ways to "shorten the pipeline" of its vital military supplies. This is effected through reduced transit times between points of manufacture and warehouses, and warehouses and points of export. A speedup in transit time will bring about a greatly improved logistics effectiveness resulting in reduced cost to the Government.

The Department of Defense has used the services of American Farm Lines to transport more than 1200 shipments (Government Bills of Lading) since December 1966. Its services to the Department of Defense have been excellent in every respect. The services of this company have afforded the Department of Defense a meaningful measure, under practical conditions, of carrier capability in general. Its shorter service is necessary as both a measure and a participant in "shortening the pipeline." A

sound adequate transportation system is essential to the national defense. Accordingly, the military establishment supports as many diverse carriers and routes as can be supported by the economy.

Services rendered to the Department of Defense by American Farm Lines have been provided pursuant to an "exemption" from economic regulation. However, recent court actions have resulted in interpretations of that exemption which will severely limit American Farm Lines' ability to continue to provide the service to the Department of Defense that it is currently receiving and which the Department of Defense considers desirable and necessary. Under the circumstances, if the Department of Defense is to continue to receive this extremely desirable service, an immediate grant of temporary authority is necessary. For example, since the United States District Court for the Western District of Oklahoma issued its decision on 20 February 1968, enjoining American Farm Lines from performing back to back transportation service for the Department of Defense, American Farm Lines has been required to turn down more than 700 truckloads of Department of Defense traffic. Prior to the injunction, American Farm Lines moved approximately 300 truckloads of Department of Defense freight per month. Accordingly, the Department of Defense urges the Interstate Commerce Commission to grant the temporary authority sought by American Farm Lines to assure the continued availability of its service. The Department of Defense will also support the desirability of the issuance of comparable permanent authority to American Farm Lines.

This office will be pleased to furnish any additional information that you may desire.

Sincerely yours,

/s/ Curtis L. Wagner, Jr.
Curtis L. Wagner, Jr.
Chief, Regulatory Law
Division

BEFORE THE
INTERSTATE COMMERCE COMMISSION

DOCKET No. MC-129908 TA

AMERICAN FARM LINES

Protest of American Trucking Associations, Inc.

Comes now American Trucking Associations, Inc. (ATA), and protests the above-captioned application and specifically requests the Commission, upon consideration of the merits, to deny the application for the following reasons:

I

Protestant's Interest

ATA is the national organization of the trucking industry, representing all types of motor carriers of property, on whose behalf it customarily appears in proceedings before the Commission and the courts. It is a non-profit organization organized and existing under the laws of the District of Columbia, with offices at 1616 P Street, N.W., Washington, D. C. 20036.

II

Shipper's Supporting Letter Fails To Demonstrate An "Immediate And Urgent Need" For The Authority Sought

Section 210(a) of the Act (49 U.S.C. § 310a(a)), provides that:

> To enable the provision of service for which there is *an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need*, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a com-

mon carrier or a contract carrier by motor vehicle, as the case may be. (Emphasis supplied)

Therefore, as a condition precedent to the granting of an application for temporary authority, applicant has the burden of establishing through supporting statements that there is an "immediate and urgent need for service which cannot be met by existing carriers." (49 C.F.R. § 1131.2(c)) Once this showing has been made the Commission, within its discretion and without hearing or other proceedings, may grant the temporary authority sought.

In order to aid the Commission in ascertaining whether the supporting statement establishes a "need" for temporary authority, guidelines have been set forth in 49 C.F.R. § 1131.2(c). This regulation provides as follows:

Any such supporting statement must contain at least the following information:

(1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved).

(2) Points or areas to, from, or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested.)

(3) Volume of traffic involved, frequency of movement, and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue, and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.

(10) Name and address of motor carrier who will provide service and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's name, address, and motor carrier docket number, if known, and state whether such application was granted or denied and the date of such action, if known. (Emphasis supplied)

The clear meaning of the above-quoted language is that it sets forth the minimal showing which *must* be made in order to establish an "immediate and urgent need for service which cannot be met by existing carriers." (49 C.F.R. § 1131.2(c)) Also, it is readily apparent that these minimal requirements are mandatory, especially when considered in light of the fact that the Commission's grant of temporary authority is discretionary, and hearings or other proceedings are not required.

In applying the requirements of section 1131.2(c) to the letter of support in this proceeding, we submit that the statement is fatally defective in a number of vital respects, and, therefore, applicant has failed to sustain its burden of proof.

The Department of Defense, in its letter dated May 15, 1968, fails to specify (1) a broad need setting forth a representative number of points which would justify the sought grant of radial authority involving a 13 State area; (2) how the involved traffic is transported now; (3) whether there is any urgency as to the time within which this service must be provided, and the reasons therefor; (4) any ill consequences which will result if the service sought is not made available to it; (5) any indicia of circumstances tending to establish that there is an immediate and urgent need for the requested service; (6) whether the supporting shipper has made any efforts whatsoever to obtain the needed service from existing carriers; and (7) whether any existing carriers either failed or refused to provide the service, or the reasons given for any such failure or refusal.

The Department of Defense predicates its support of the service sought upon the following grounds: (1) the constant search for carriers offering expedited transit time which will enable the Department of Defense to "shorten the pipeline" of its vital military supplies; and (2) recent court actions [1] which concluded that the transportation of the commodities involved herein by American Farm Line constitutes common carriage and is not exempt under Section 203(b)(5) of the Act (49 U.S.C. § 303(b)(5)), and en-

---

[1] In *Munitions Carriers Conference, Inc., et al.* v. *American Farm Lines, et al.*, Civil No. 67-487, D.C.W.D. Okla., Feb. 20, 1968, the court found that transportation of the traffic involved herein by American Farm Lines constituted "common carriage by motor vehicle" as defined in Section 203(a)(14) of the Act (49 U.S.C. § 303(a)(14)), and is not exempt under Section 203(b)(5) of the Act (49 U.S.C. § 303(b)(5)). Therefore, the court enjoined this round-trip (back-to-back) service because it was found to be in violation of Sections 203(c) (49 U.S.C. § 303(c)) and 206(a) (49 U.S.C. § 306(a)) of the Act.

Also, in *Munitions Carriers Conference, Inc., et al.* v. *American Farm Lines, et al.*, Civil No. 68-148, D.C.W.D. Okla., May 28, 1968, American Farm Lines was enjoined from providing the above-described service except as a leg of a round trip, the other leg of which constitutes transportation performed pursuant to the provisions of the Agricultural Marketing Act.

joined applicant from moving such traffic in round trip (back-to-back) movements. Therefore, the Department of Defense states that American Farm Lines' expeditious and satisfactory service is no longer available to it.

The regulation in 49 C.F.R. § 1131.4(b)(2) clearly sets forth the standard to be applied in determining the existence of an "immediate and urgent need" as follows:

> An immediate and urgent need justifying a grant to temporary authority will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service. Such a showing may involve a new or relocated plant, different method of distribution, new or unusual commodities, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to provide service, or comparable situations which require new motor carrier service before an application for permanent authority can be filed and processed.

In light of the above-quoted language, we submit that neither the supporting shipper's constant quest to "shorten the pipeline" (whatever that ambiguous phrase may mean) of its vital military supplies nor the fact that American Farm Lines, due to its illegal transportation of these commodities, was enjoined from performing such service establish an "immediate transportation need;" especially in the absence of a showing that existing services cannot meet these "needs." It is significant to note that although the shipper states that due to the injunction American Farm Lines has had to turn down over 700 truckloads of traffic, and that prior to the injunction American Farm Lines moved about 300 truckloads a month of shipper's traffic, shipper nowhere alleges within the four corners of its statement that it was unable to obtain service from existing

carriers for those loads which American Farm Lines could no longer move, that the services of existing carriers are not reasonably satisfactory, or that existing carriers are not authorized to serve all the points involved. The most that the statement tends to establish is that the supporting shipper has used American Farm Lines' illegally performed service in the past and desires to give its blessing to that organization's efforts to legitimatize its siphoning off, for the future, the traffic of existing carriers. This, at best, amounts to little more than a mere preference [2] for American Farm Lines' service.

We submit that the letter in support of this application does not meet the minimum requirements of a supporting statement as set forth in 49 C.F.R. § 1131.2(c) and, concomitantly, does not offer one scintilla of evidence tending to establish that there exists an "immediate and urgent need for service which cannot be met by existing carriers." Inasmuch as applicant has failed to sustain its statutory burden, and for the reasons previously discussed, the application should be denied.

Conclusion and Prayer

In an application seeking temporary authority, applicant has the statutory burden of proving an "immediate and

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[2] The Department of Defense has prescribed specific standards for participation by representatives of the military services or agencies in proceedings befor transportation regulatory bodies. As pertinent hereto, Change 20, Chapter 105, 4 April 1968, Military Traffic Management Regulation (AR 55-355) provides as follows:

> Evidence and participation in such proceedings will be in accordance with the military needs or such other information as may be requested by the regulatory or supervisory body (consistent with security regulations) and, in the event new or additional operating authority is involved, *will not indicate a preference for any carrier. Such participation will be in support of the needs of the department for service as distinguished from support of a particular carrier. Applications for operating rights will not be supported when the effect is simply to provide additional service; or to provide a large number of participating carriers;* or to provide single-line service when adequate interline service exists; or to provide lower rates. (Emphasis supplied)

urgent need for service which cannot be met by existing carriers." That burden is not met where, as here, the letter in support of the application fails to set forth even the minimum information required by the Commission in order to enable it to ascertain whether there is an "immediate and urgent need" for the proposed service. Applicant has totally failed to justify the extremely broad grant of authority sought in this proceeding, and completely ignored the availability of the service of existing carriers and their ability to meet whatever need, if any, might exist. In light of the insufficiency of the evidence submitted on behalf of applicant to demonstrate any immediate and urgent need for the proposed service, the application should be denied.

Respectfully submitted,

AMERICAN TRUCKING ASSOCIATIONS, INC.

PETER T. BEARDSLEY
RICHARD A. MEHLEY
NELSON J. COONEY
JOHN R. BAGILEO
Attorneys

Protest of Ashworth Transfer, Inc.

Ashworth Transfer, Inc., hereinafter called "Ashworth" and Hawkes Transportation Company, Inc., hereinafter called "Hawkes", a wholly owned subsidiary of Ashworth, herewith file their joint protest to the application designated above, avering as follows:

1. Applicant seeks temporary authority to transport General Commodities including Class A and B explosives, restricted to traffic moving on Government Bills of Lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the

one hand, and, on the other, points in Washington, California, Nevada and Arizona.

2. The sole supporting shipper is the Department of Army. The statement filed on its behalf in support of this application wholly fails to comply with the regulations of the Commission and is entitled to no weight whatsoever. (See ex parte 67, 98 M.C.C. 483). The first defect is that the statement contains no "certification of its accuracy" as required by the Commission Regulations. Second, the statement is deficient in that it fails to state any attempt to find alternate transportation and it fails to show *any* deficiency of any kind in presently authorized and available service. Indeed, the reasonable inference to be drawn from the statement is that presently authorized service is available and adequate. The statement avers that since applicant was enjoined from handling certain products for the supporting shipper, it had turned down 700 loads. These loads presumably were transported by presently authorized carriers and no complaint of any kind is made with respect to such movements.

A further deficiency in the statement is its complete failure to delineate the types and volume of the various commodities involved. Aside from the specific reference to Class A and B explosives, the statement shotguns the entire transportation arena without so much as a reference to a single commodity which may be involved. The issuance of such a broad and blanket authority on a temporary basis is not consistent with the National Transportation policy.

In short, the supporting statement is wholly deficient as a matter of law and could not support a grant of authority, even if unopposed by protecting carriers. As is generally discussed in *Motor Carrier Regulations*, Sec. 1131.4(B)(2), the supporting statement must show "an immediate transportation need which reasonably cannot be met by existing

carrier service". No such showing is made, or even attempted, in the supporting statement here involved.

3. The operating authorities of the protestants are attached hereto as Appendix 1 (Ashworth) and Appendix 2 (Hawkes). Pursuant thereto, these protestants are now transporting tremendous volumes of Class A and B explosives between the points here involved in interline service with other duly authorized carriers. Where destination is a point in Nevada or Arizona, Ashworth is the originating or delivering carrier. In other moves, Ashworth acts as a bridge carrier. Hawkes acts as both delivery and originating carrier and bridge carrier on Washington moves, depending upon the specific origin or destination point in Washington. All of such moves go from origin to destination on the same trailer. Neither Ashworth nor Hawkes have received complaints from the supporting shipper with respect to the interline nature of such moves. Indeed, they have received no complaints of any kind with respect to these moves that have not been resolved to the mutual satisfaction of the parties.

Interline carriers for these moves of Class A and B explosives are:

Riss & Co., Inc.
Consolidated Freightways, Inc.
Pacific Intermountain Express
Tri-State Motor Transit Co.
Illinois California Express, Inc.
Ringsby Truck Lines, Inc.
Watson Wilson Transportation System
DeTar Distributing Co., Inc.
T.I.M.E. Freight, Inc.
Navajo Freight Lines
H. J. Gefferies Truck Lines
Baggett Transportation Co.

The movement of such A and B explosives is extremely important to these protestants. It is also extremely competitive at the present time. They desire to increase the amount of such traffic in which they participate. A diversion of the traffic now being handled by them would have substantial adverse effects upon each of them. They are ready, willing and able to continue to transport Class A and B explosives between the points involved in this application.

4. In addition to the Class A and B explosives authority of these protestants, they have substantial authority involving many other commodities which are embraced by this extremely broad and sweeping application. Illustrative is the "size and weight" authority of both carriers and the "contractors' equipment and supplies" authority of Ashworth. Both carriers are actively engaged in furnishing all of the services embraced by their operating authorities. When origin or destination is beyond the territory of these two carriers, moves are made in interline service, consistent with the rules and regulations of the Commission, with other duly authorized carriers. When the customer so requests, such moves go from origin to destination in the same equipment and with the same driver.

Both protestants are willing and able to continue to serve the supporting shipper and the shipping public in the transporting of these commodities. Neither is able to fully utilize its present equipment or facilities. They have terminal facilities at Salt Lake City, Utah, and Denver, Colorado, and station equiment in Washington, Nevada and Arizona. They are ready and willing to station equipment at any other point desired by the shipping public. They need and desire additional traffic. Diversion of existing traffic would create very serious problems for each of them.

5. The statement of the supporting shipper refers to an injunction entered against the applicant to prevent further unlawful hauling by applicant by the United States District Court for the Western District of Oklahoma on February 20, 1968. A further injunction was entered against the applicant by the same Court on Monday, May 20, 1968.

We submit that the arrogant and callous disregard by the applicant of prevailing law and of the rules and regulations of the Commission which required the injunctive relief granted by the Oklahoma District Court demonstrates that the applicant is not a fit carrier to be granted operating authority. A grant of authority to such a carrier, if at all, should be made only after full and complete hearing at which these protestants would have an opportunity to cross-examine applicant's operating witnesses and offer evidence in opposition to the grant of authority.

Protestants respectfully submit that the application here involved should be denied for the following reasons:

1. Applicant has failed to show that the proposed service is required by the public convenience and necessity.

2. Applicant has failed to show any urgent or immediate need, or indeed any need of any kind, for the proposed service.

3. The supporting statement, as a matter of law, is insufficient to justify a grant of temporary authority.

4. Applicant has demonstrated its lack of fitness as a common carrier by its callous disregard of the law and of the rules and regulations of the Commission which has necessitated Federal Court injunction.

5. There are presently available authorized carriers, including these protestants, that can and will transport the commodities here involved between the points and places

here involved. Such services have not been shown to be unsatisfactory or deficient in any particular.

Respectfully submitted,

KEITH E. TAYLOR
Keith E. Taylor, Esq.
of and for
PARSONS, BEHLE, EVANS & LATIMER
520 Kearns Building
Salt Lake City, Utah 84101
Attorneys for Protestants

Protest of Bellm Freight Lines, Inc.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC 129908 TA

In the Matter of:

AMERICAN FARM LINES, 641 North Meridian, Oklahoma City, Oklahoma

Comes now Bellm Freight Lines, Inc., Bonifield Bros. Truck Lines, Inc., Buske Lines, Inc., Centralia Cartage Company, Hyman Motor Service Company, Lee Loyd & Sons Truck Co., Inc., Lovelace Truck Service, Inc., McBride's Express, Inc., H. R. Rinker Transfer and Storage Co., Ulrich Freight Line, J. W. Ward Transfer, Inc., and Western Trucking Company and respectfully submit this their protest to the subject application which appeared in the Federal Register of May 28, 1968 at Page 7796 therein.

Protestants' interest in this matter is in the transportation of general commodities moving on Government Bills of Lading between those points in Illinois, Indiana, Ken-

tucky they are authorized to serve on the one hand, and, on the other, points in the States of Washington, California, Nevada, and Arizona joint-line in connection with T.I.M.E. Freight, Inc., Pacific Intermountain Express, and United-Buckingham Freight System, Inc. over the St. Louis, Mo. and Chicago, Illinois gateways. Protestants are all common carriers of general commodities as attested to by copies of their certificates attached and provide such service daily from and to all of their authorized points. They consider all portions of the certificates attached permitting the transportation of general commodities to be in conflict with the instant application. Collectively protestants operate well over 1200 pieces of road equipment and maintain some 50 terminals and call station through their authorized areas. They maintain through routes and joint rates as well as trailer interchange with the connecting carriers named above.

Protestants interchange or interline daily with T.I.M.E., P.I.E., and United Buckingham and to the best of their knowledge such service has been satisfactory. They contend that they have the equipment and facilities available to handle any and all traffic tendered to them including government shipments, therefore, the granting of the instant application would bar them from further participation in such traffic. They state further that to their knowledge there has not been sufficient movement of general commodity traffic on Government Bills of Lading to sustain the operations of existing carriers in their areas much less an additional one. They have in the past when called upon to do so, transported government traffic under joint tenders with their connections.

Protestants contend that an emergency does not exist and that if there were one they stand fit, willing, and able to meet the needs of their government on immediate notice, therefore, the instant application should be denied until such time as a proper hearing can be held permitting them

to bring forth evidence of their operations and ability to provide the service required.

Dated at *St. Louis, Mo.* this *9th* day of *June* 1968.

BELLM FREIGHT LINES, INC.
BONIFIELD BROS. TRUCK LINES, INC.
BUSKE LINES, INC.
CENTRALIA CARTAGE COMPANY
HYMAN MOTOR SERVICE COMPANY
LEE LOYD & SONS TRUCK CO., INC.
LOVELACE TRUCK SERVICE, INC.
MCBRIDE'S EXPRESS, INC.
H. R. RINKER TRANSFER & STGE. CO.
ULRICH FREIGHT LINE
J. W. WARD TRANSFER, INC.
WESTERN TRUCKING COMPANY

ADAMS, MCLAUGHLIN & SIMPSON

Attorneys at Law
Pacific Building
Portland, Oregon 97204

June 20, 1968

William B. Adams
John G. McLaughlin
Robert G. Simpson

Telephone: 227-2615

Mr. C. L. Phillips,
District Supervisor
Interstate Commerce Commission
Bureau of Operations
Room 350, American General Bldg.
210 Northwest Sixth
Oklahoma City, Oklahoma 73102

Dear Mr. Phillips:

Re: MC-129908, American Farm Lines

In enclose herewith the original and six copies of the protest of Black Ball Freight Service, Pier 30, Seattle, Washington 98134, to the above application.

1. *Description of Authority to Perform Service:*

Protestant has authority to transport in Docket MC-7325 and Subs 3, 5, 6, 8 and 9 wherein and whereby it is authorized to transport general commodities including Class A & B explosives in an area embracing Clallam, Jefferson, Kitsap and Mason Counties, Washington and Seattle and Tacoma, Washington.

2. *Interest in the Application:*

Applicant is protesting this application because it derives in excess of 24 percent of its total revenue from the interlining of traffic moving between the points covered by the application to the extent that

it interlines at Seattle and Tacoma traffic moving between its area and the States named in the application.

Protestant, for example, interlined at Tacoma or Seattle in excess of 52,000,000 pounds of Class A & B explosives during the past year, moving from the Midwest States named in the application to Bangor, Washington. This was all traffic moving on Government Bills of Lading.

Protestant is dependent upon this traffic to survive. Its operating ratio was 94.8 for the calendar year 1967.

Applicant has been handling this explosives traffic for more than 25 years in interline service in through trailers primarily with Garrett Freightlines, Inc., Consolidated Freightways Corporation of Delaware and Pacific Intermountain Express Co.

3. *Equipment and Ability to Perform the Service:*

This protestant, as indicated, has been satisfactorily performing service to points in its service area (including the transportation of explosives) for many years.

4. *Shipper Request:*

Protestant transports traffic for the account of Department of the Army daily. Protestant knows of no refusal or failure of service.

5. *Analysis of Shipper Support:*

An examination of the shipper's supporting letter discloses it does not point out a specific instance of the failure of any service on the part of this protestant or of any other carrier.

Ex Parte 67, 98 M.C.C. 483, reads in part as follows:

"(c) *Supporting statements.*—Each application for temporary authority must be accompanied by a sup-

porting statement (s) designed to establish an immediate and urgent need for service which cannot be met by existing carriers, except that when the Department of Defense is the shipper such support may be furnished directly to the Temporary Authorities Board by the Washington office of that Department. Each such shipper's statement, except those submitted by the Department of Defense must contain a certification of its accuracy and must be signed by the person (or an authorized representative thereof) having such immediate and urgent need for motor carrier service. Any such supporting statement must contain at least the following information:

(1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved.)

(2) Points or areas to, from, or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested).

(3) Volume of traffic involved, frequency of movement, and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reason given for any such failure or refusal.

(10) Name and address of motor carrier who will provide service and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's name, address, and motor carrier docket number, if known, and state whether such application was granted or denied and the date of such action, if known."

The shippers' letters are notably deficient in not complying with (3), (5), (6), (8) and (9). Attention is invited to the effect that the omissions are a part of the minimum statutory requirements.

It is submitted that the Commission should summarily reject the application for non-compliance with its own rules and regulations.

The shippers' failure to comply with the specific rules severely handicap this protestant in demonstrating that the shippers have in all respects been adequately served, which is a fact.

The rules prescribed in Ex Parte 67 are procedural rules. The Courts have universally and consistently ruled that procedural rules are binding upon the parties to which they apply and also upon the administrators who issue them. *Service* v. *Dulles*, 354 U.S. 363, 472. 388-389; *Arcardi* v. *Shaughnessy*, 347 U.S. 260, 265; *Bridges* v.

Wixon, 326 U.S. 135, 163; and *Coleman* v. *Brucker*, 257 Fed. 2d. 661, where at page 662 it was held:

> "* * * And in *Service* v. *Dulles*, 1957, 354 U.S. 363, 372 77 S. Ct. 1152, 1157, 1 L. Ed. 2d. 1403, the Court sustained Service's contention 'that the Secretary's action is subject to attack under the principles established by this Court's decision in United States ex rel *Accardi* v. *Shaughnessy*, 347 U.S. 260 (74 S. Ct. 499, 98 L. Ed. 681), namely, that regulations validly prescribed by a government administrator are binding upon him as well as the citizen, and that *this principle holds even when the administrative action under review is discretionary in nature.*'" (Emphasis supplied)

Likewise, in *Atwood's Transport Lines, Inc.* v. *U. S.*, 211 Fed. Supp. 168, affirmed per curiam, 373 U.S. 377, it was stated that:

> "Rules and regulations promulgated by Governmental establishments pursuant to statutory authority have the force and effect of law, and concededly are subject to same tests as statutes. * * *"

6. *The Extremely Broad Scope of the Application:*

The application is extremely broad in scope. It covers the movement of commodities between thousands of points. Accordingly, the application is extremely vague as to an urgent and immediate need for any additional transportation services.

GENERALLY

We wish to stress that the applicant has utterly failed to comply with the requirements necessary to establish an immediate and urgent need for its proposed services and to meet its necessary burden of proof.

The grant of the Temporary Authority would be clearly at variance with the policy of the Commission announced on January 23, 1968, which reads:

"INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

737-9765 Ext. 350
15-68

FOR RELEASE:

Tuesday, January 23, 1968
9:30 a.m.

"POLICY CLARIFIED FOR ICC ACTION ON APPLICATIONS FOR TEMPORARY AUTHORITY TO CONDUCT MOTOR CARRIER OPERATIONS

Requests for temporary authority to conduct regulated motor carrier service will be turned down if the applications do not adequately comply with Interstate Commerce Commission rules.

The clarified policy will be administered by Division 1, which handles operating rights matters.

The Commission adopted this policy upon receiving recommendation from the division because of the haphazard preparation of many of the more than 5,000 applications for temporary authority received annually. Most of the requests involve common carrier trucking. The applications usually result from an emergency or short term need of shippers or when new products and commodities are developed and require immediate transportation services.

Because of 'slipshod' preparation of many of the applications, the division frequently has found it difficult to reach an informed and equitable decision. Further investigation by the ICC staff often has been required in order to obtain necessary information. Foremost among the com-

plaints in this area are those concerning failure of the applicant or his representative to submit supporting statements which contain all of the information required by Section 240.2(e) of the Temporary Authority Rules. These rules are set forth in Ex Parte No. MC-67, Motor Carrier Temporary Authorities, 98 M.C.C. 483, and 49 C.F.R. 1131 (formerly 49 C.F.R. 340).

According to the clarified policy, Division 1 will deny temporary authority applications in which, because of noncompliance with the rules, a fair adjudication is not possible on the record before the Commission, without prejudice, however, to the filing of a new application conforming to the rules."

WHEREFORE, it is prayed that the application be denied.

Dated this 20th day of June, 1968.

Respectfully submitted,

WILLIAM B. ADAMS
624 Pacific Building
Portland, Oregon 97204
Attorney for above-named Protestant.

WBA/sr
Enc.

C & H Transportation

Terminal Points of Protestant:

Attached hereto as Appendix 3 is a list showing the location of the general dispatch offices of this protestant and its affiliate and the location of its terminals which are maintained to solicit and provide traffic under its and its affiliate's existing authority. Twenty-three of such terminals are located in the area proposed to be served by applicant (including one terminal in Utah, if the application be amended to include that State).

Basis of Protest of C & H:

Protestant C & H has invested millions of dollars to obtain the motor carrier rights and equipment which it utilizes in providing its authorized service to the shipping public, including the supporting shipper, the Department of Defense. Approximately 10% of protestant's gross revenue is derived from shipments being transported for the Department of Defense. Prior to institution of service by applicant, in excess of its lawfully exempted transportation, this protestant derived a greater percentage of its revenue from government shipments.

The instant application is a patent attempt by applicant to obtain authority from the Commission to enable it to continue performing service which it has heretofore been performing unlawfully.

One department of the government should not be utilized as an agency to obtain appropriate authority from another department of the government to continue performing operations commenced unlawfully.

In a letter to American Farm Lines, dated April 30, 1968, the Office of the Judge Advocate General, Headquarters, Department of the Army, stated:

> "The Department of Defense has used the services of American Farm Lines, Inc., to transport more than

1,200 shipments since December, 1966. Your service has been excellent in every respect. In fact, the Department of Defense has found American Farm Lines' service to be fast, efficient, responsive, and economical. Under the circumstances, the Department of Defense is desirous of being able to continue to use the services of American Farm Lines. In many instances the Department of Defense receives direct through service from American Farm Lines, Inc. which is desirable. In other words, the Department of Defense would like to retain this transportation source which has been available to it. However, the Department of Defense is not in a position to state that there would be insufficient or inadequate service without American Farm Lines.

"Should an oral hearing be held on your application, the Department of Defense will present an authorized and qualified witness to testify to the above facts."

That letter was not used to support the instant application. However, the May 15, 1968 letter which was used to support the application does not state that the service which it is presently receiving is inadequate and that an emergency need for additional transportation exists.

The May 15, 1968 letter of support indicates that the Department of Defense continues to tender traffic to American Farm Lines, of which "American Farm Lines has been required to turn down more than 700 loads". The support letter does not so indicate, however it is to be presumed or inferred that existing carriers were tendered and did transport those 700 loads.

In any event, there is no emergency which requires that temporary authority be issued to an additional carrier.

Moreover, C & H and its affiliate have the authority, equipment, facilities, to handle a great deal more traffic than has been tendered to it by the Department of Defense.

It would be far more in keeping with the National Transporation Policy for the involved transportation service to be performed by carriers who have invested large sums of money in obtaining authority, providing equipment, and complying with regulations of the Commission in their present operations, than to grant new authority to an organization strongly suspected of having conducted unlawful operations under the guise that the shipments were being transported by an agricultural co-op for its members, or as back haul to transportation being performed for its members.

WHEREFORE, it is submitted that the instant application should be denied in its entirety.

Respectfully submitted,

C & H TRANSPORTATION CO., INC.

By_____

W. T. BRUNSON

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC 129908 TA

Fed. Reg. Date: May 28, 1968

Page: 7796

Date of Protest: June 11, 1968

AMERICAN FARM LINES, 641 North Meridian,
Oklahoma City, Oklahoma 73107

APPLICANT'S REPRESENTATIVE:

Wesley L. Johnson, 641 North Meridian,
Oklahoma City, Oklahoma 73107

Joint Protest of Central Freight Lines Inc., Central Express Inc., Red Arrow Freight Lines, Inc., Brown Express, Inc., Alamo Express, Inc., J. H. Rose Truck Line, Inc., J. J. Willis Trucking Company, J. V. Harrison Truck Lines, Inc., H. S. Anderson Trucking Company, Miller Truck Line, Inc., Central Forwarding Inc. and Robertson Tank Lines, Inc. To Request for Temporary Authority

To: C. L. Phillips, District Supervisor
Interstate Commerce Commission
Bureau of Operations
Room 350, American General Building
210 Northwest Sixth
Oklahoma City, Oklahoma 73102

Now come Central Freight Lines Inc. and Central Express Inc., 303 South 12th Street, Waco, Texas, Red Arrow Freight Lines, Inc., 3901 Seguin Road, San Antonio, Texas, Alamo Express, Inc., 51 Essex Street, San Antonio, Texas, Brown Express, Inc., 434 South Main Avenue, San Antonio, Texas, J. H. Rose Truck Line, Inc., P. O. Box 16190, Houston, Texas, J. J. Willis Trucking Company, P. O. Box 2112, Odessa, Texas, J. V. Harrison Truck Lines, Inc., P. O. Box 15057, Houston, Texas, H. S. Anderson Trucking Company, P. O. Box 3656, Port Arthur, Texas, Miller Truck Line, Inc., 901 Northwest 28th Street, Fort Worth,

Texas, Central Forwarding Inc., P. O. Box 1519, Waco, Texas, and Robertson Tank Lines, Inc.. P. O. Box 1505, Houston, Texas, and submit this joint protest to the granting of the captioned temporary authority application, and would respectfully show:

Applicant seeks to operate as a common carrier, by motor vehicle, over irregular routes, transporting general commodities including Classes A and B explosives, restricted to traffic moving on Government Bills of Lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, and Arizona (four state area), for 180 days. The authority sought by applicant would conflict with existing operations now being performed by protestants pursuant to authority granted to them by the Interstate Commerce Commission, as follows:

Regular Route Protestants

Protestants Central Freight, Central Express, Brown, Red Arrow and Alamo are common carriers by motor vehicle engaged in the transportation of general commodities over regular routes wholly within the State of Texas.

Protestant Central Freight Lines Inc. operates in interstate commerce pursuant to authority issued in Docket No. MC-30867 and subs thereunder. Protestant Central Express Inc. is a wholly-owned subsidiary of Central Freight Lines Inc. and operates in interstate commerce pursuant to authority issued in Docket No. MC-4943 and subs thereunder. The Central System employs approximately 1700 full-time experienced employees and owns and operates over 1560 units of equipment, including trailers of various types, road and city tractors, and similar equipment customarily operated by regular route, general commodity carriers. Approximately 80 terminal facilities are maintained at various points over its system of routes.

Protestant Red Arrow Freight Lines, Inc., operates in interstate commerce pursuant to authority issued in Docket No. MC-2226 and subs thereunder. Red Arrow employs approximately 500 full-time experienced employees and owns and operates approximately 540 units of equipment, including trailers of various types, road and city tractors, and similar equipment customarily operated by regular route, general commodity carriers. Major terminals are maintained at 22 points and local terminals at 29 points on its system of routes.

Protestant Alamo Express, Inc., is engaged in rendering a common carrier service wholly within the State of Texas over certain specified regular routes, pursuant to authority contained in Docket No. MC-107727 and subs thereunder. Alamo operates a total of 500 vehicles over its entire system and employs a total of 580 people, and its equipment is designed to handle all types of general commodity freight. Alamo maintains modern and efficient terminals at many points throughout its system of routes.

Protestant Brown Express, Inc., operates in interstate commerce pursuant to authority issued in Docket No. MC-46054 and subs thereunder. Brown employs approximately 900 full-time experienced employees and owns and operates over 800 units of equipment similar to the type operated by Red Arrow, Alamo and Central. It maintains terminals at numerous points over its system of routes.

Collectively, protestants' regular route operations encompass almost all the major population areas and industrial complexes in the State of Texas. The area encompassed by their authority may best be described by stating that the protestants named above can serve practically every village, town, and city within an area bounded on the north by Wichita Falls, Fort Worth and Dallas, on the east by Houston, Beaumont, Orange, and Galveston, on the south by Brownsville and other points in the Rio Grande Valley, and on the west by Laredo, San Antonio

and Brownwood. Each protestant's list authority is quite voluminous and quite difficult to explain. It is believed the description of the authority given above is both the simplest and clearest method of describbting the scope of protestants' operations. However, if applicant or the Commission desires copies of protestants' authority and route maps, copies will be forwarded upon request.

Protestants offer daily scheduled overnight service between all points served direct, as well as a service on call for the movement of volume shipments. Although protestants do not serve direct any points located outside the State of Texas, protestants are presently providing service for the transportation of general commodities from points in Texas, on the one hand, and, on the other, points in the involved States of Washington, California, Nevada, and Arizona by interline and equipment interchange with other authorized carriers serving those states under long-standing agreements and tariff concurrences. A major portion of protestants' revenues are derived from such interline service. Interlining occurs at all major Texas cities.

Therefore, applicant's proposal is in direct conflict with existing services now being provided by the above named regular route carriers through interline with other carriers authorized to serve the four state area sought to be served by applicant from and to points within the State of Texas.

Irregular Route Protestants

(1) *J. H. Rose Truck Line, Inc.* Protestant Rose is a motor common carrier, operating over irregular routes, performing a call and demand service in the transportation of size and weight commodities, *Mercer* description commodities, pipeline equipment, contractors' machinery, equipment, materials and supplies, and related commodities pursuant to Certificate No. MC-13250 and subs thereunder.

As here pertinent, Rose holds authority under its Base Certificate and its Subs 45, 59, 68, 76 and 80 which is in

direct conflict with the services sought to be provided by the applicant. Possible conflicts exist between applicant's proposal and Subs 60, 62, 70, 75, 79 and 82 of Rose's authority.[1] Tacking possibilities exist between many of the subs listed and Rose would tack its authority to provide the broadest service possible. In order to provide service to, from or between any involved points which Rose is not authorized to serve direct, Rose would engage in interline and through equipment interchange operations under long-standing agreements and tariff concurrences with other carriers authorized to serve the involved states.

Rose maintains its headquarters and principal terminal in Houston, Texas, and also maintains terminals in other states in which it operates. A list of Rose's terminals, equipment and representative pictures thereof appear in the brochure attached and referred to in Footnote 1, above. Protestant Rose has been operating throughout the area here involved for many years and invested vast sums of money in equipment, facilities and authority necessary to operate therein. It is not operating to capacity and denies that there is an immediate or urgent need for the additional competitive motor carrier service in that area.

(2) *J. J. Willis Trucking Company.* Protestant Willis is a motor common carrier operating in both interstate and intrastate commerce pursuant to authority issued by the Interstate Commerce Commission in MC-107993 and subs thereunder, as well as various State regulatory bodies. It is an irregular route, call and demand carrier transporting *Mercer* description commodities, commodities requiring special equipment, and various other classes of commodities. Applicant's proposal would conflict with this pro-

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[1] In each case where specific portions of a protestant's authority are referred to a copy of that carrier's existing authority has been attached to the copy of this protest mailed to the applicant's representative and to the original copy of this joint protest filed with the District Supervisor shown in the Federal Register.

testant's Base Certificate and Subs 8 and 11, and possibly conflict with its Subs 6 and 10. Tacking possibilities exist between these subs. In order to provide service to, from or between any of the involved states which it does not serve direct, protestant Willis would engaged in interline and through equipment interchange with other carriers authorized to serve those states under long-standing agreements and tariff concurrences.

(3) *J. V. Harrison Truck Lines, Inc.* Protestant Harrison is an irregular route, call and demand carrier operating in both interstate and intrastate commerce, specializing in the transportation of iron and steel and iron and steel articles size and weight commodities, and related commodities, between all points in Texas pursuant to Certificate of Registration No. MC-85715 and subs thereunder. Although protestants' single-line operations are confined to the State of Texas protestant would provide service to, from and between the four involved origin and destination states and all points in Texas by interline with reliable connecting carriers under long-standing interline and equipment interchange agreements. A copy of protestant's authority is attached.

(4) *H. S. Anderson Trucking Company.* Protestant Anderson is a motor common carrier holding certificates of convenience and necessity from the Interstate Commerce Commission in Docket MC-97068, and subs thereunder. H. S. Anderson Trucking Company is presently authorized to transport so-called *Mercer* description commodities, heavy and cumbersome commodities, sulphur industry commodities, earth drilling commodities, structural and plate steel, reinforcing steel, tank steel, contractors' machinery, equipment and supplies, and various other specified commodities. The company is an irregular route, call and demand carrier. The company is presently authorized to provide single-line services in the States of Louisiana, Texas, and Alabama. However, this protestant would

provide service on shipments to or from the involved points beyond its authorized territory by interline and equipment interchange with connecting carriers authorized to serve such points. A copy of protestant's authortiy is attached.

(5) *Miller Truck Line, Inc.* Protestant Miller is a motor common carrier operating in both interstate and intrastate commerce pursuant to authority issued by the Interstate Commerce Commission in MC-118034 and subs thereunder, and various State regulatory bodies. Protestant Miller is an irregular route, call and demand carrier engaged in the transportation of meats, packing house products, fruits, vegetables and other similar type perishable products. This protestant is authorized to operate in the States of Texas, Oklahoma, Louisiana, Arkansas, New Mexico, Alabama and mississippi and is transporting commodities here involved to, from and between specified points in those states. Although this protestant does not serve direct any of the four origin and destination states involved in the instant application, protestant would engage in interline and through equipment interchange with carriers authorized to serve points in those states. A copy of protestant's authority is attached.

(6) *Central Forwarding Inc.* Protestant Central Forwarding is an irregular route, motor common carrier, holding authority from the Interstate Commerce Commission in MC-24670 and subs thereunder, and the Railroad Commission of Texas. Protestant is principally a transporter of household goods, used office furniture and equipment, and other specified commodities. Protestant Central Forwarding Inc., operates to, from or between specified points within the States of Texas, New Mexico, Arkansas, Oklahoma, Kansas and Louisiana. Although this protestant offers no direct, single-line service to any of the four involved origin and destination states, it does engage in interline operations with other carriers authorized to serve those states. A copy of protestant's authority is attached.

(7) *Robertson Tank Lines, Inc.* Protestant Robertson is a motor common carrier operating over irregular routes, performing a call and demand service in the transportation of acids, chemicals, petroleum and petroleum products and other specified commodities, principally in bulk. It operates in interstate commerce pursuant to authority granted by this Commission in Docket MC-116077 and subs thereunder. By virtue thereof, Robertson operates in practically all of the contiguous 48 states. Robertson operates in excess of 857 pieces of equipment, which include some 347 truck-tractors and 510 trailers of all types and kinds. Applicant's proposal would be in direct conflict with protestant Robertson's existing Subs 6, 8, 64, 77 and 78, 82, 118, 120, 136, 166, 178 and 203. Tacking possibilities exist between these various subs.

Because of the broad nature of the authority sought, both commodity-wise as well as territorial scope, each of the above named protestants believed that they have a major interest in applicant's proposal and that a grant of such proposal would result in a reduction of their revenues and create duplicating authority to that now held by them, all of which would be destructive of sound economic conditions in regulated transportation.

All of the above protestants operate suitable equipment to transport the involved commodities, are financially capable, and are not operating to capacity. If called upon to do so by the Department of Defense these carriers either individually or collectively are authorized to transport and willing to transport the commodities involved in the instant application providing a direct, single-line service or connecting-line service to all of the states here involved from points in the states they are authorized to serve, and vice versa.

The Department of Defense in its letter dated May 15, 1968, has done nothing more than make general allegations about satisfaction with the prior services of applicant and

a desire for continuous use of applicant on a regulated basis. No criticism was levelled at existing carriers and no allegations of failure to provide needed service were made by the Department of Defense. The Commission's regulations governing the grant of motor carrier temporary authority, Section 240.4(b), Subparagraphs (1) through (8), conclusively and specifically require the showing of an immediate and urgent need for the transportation of commodities from specified origin points or areas to specified destination points or areas where *no carrier service* capable of meeting such needs is available. An immediate and urgent need justifying a grant of temporary authority to an applicant will be determined to exist only where it is established that there is or soon will be an immediate transportation need *which reasonably cannot be met by existing carrier service*. Such can be proven by evidence showing that new or relocated plants are involved, new or unusual commodities are involved, origins and destinations not served by existing carriers, a discontinuance of existing service, or failure of existing carriers to provide service. No such showing has been made by the applicant or its supporting shipper.

Protestants further say that the supporting shipper in the involved application, to-wit, the Department of the Army, Office of Judge Advocate General, is not the proper office within the Department of the Army to lend support to an application before the Commission. Army Regulation 55-355 provides, among other things, that participation by representatives of the military departments in proceedings involving operating authority are to be undertaken only when the Commander, Military Traffic Management and Terminal Service, determines that *no carrier* is authorized to render the service required by the Department of Defense or that the existing services of authorized carriers are inadequate to fulfill the needs of the Department of Defense. As stated above, no such showing has been made and protestants say that it is beyond reasonable belief that

the Military Traffic Management and Terminal Service could ever make such a prerequisite finding concerning the broad territorial and commodity description proposed by the applicant.

Additionally, protestants respectfully submit that the sole basis for support of the application rests in rate considerations which is not a criteria in a temporary authority proceeding, and, therefore, cannot be properly considered. Fitness, however, is a proper consideration and in such connection reference is directed to *Munitions Carriers Conference, Inc., et al.* v. *American Farm Lines, et al.*, Civil Action No. 67-487, U.S.D.C., Oklahoma (1968) wherein a Federal District Court permanently enjoined applicant from the performance of unlawful "back-to-back" (round trip) transportation on behalf of the Government.

Subparagraph (8) of Section 240.4(b) of the Commission's regulations concerning the grant or denial of temporary authority applications reads as follows:

> "(8) *General basis for disproval.* Applications for temporary authority may be denied for the following reasons:
>
> "(i) Failure to meet statutory standards.
>
> "(ii) Unfitness of the applicant."

Protestants respectfully submit to the Commission that the applicant has (1) failed to meet the statutory standards in that neither it nor its supporting shipper made any proof of an immediate and urgent need which cannot be met by existing carriers, and (2) that applicant is unfit to provide such services because of its prior judicially determined illegal operations.

WHEREFORE, premises considered, protestants deny that there is any immediate or urgent need for the services

proposed in the application and pray that the application for temporary authority be denied.

Respectfully submitted,

THOMAS E. JAMES
PHILLIP ROBINSON
DAN FELTS
PAT H. ROBERTSON
Attorneys for Protestants
Central Freight Lines Inc.
Central Express Inc.
Red Arrow Freight Lines, Inc.
Brown Express, Inc.
Alamo Express, Inc.
J. H. Rose Truck Line, Inc.
J. J. Willis Trucking Company
J. V. Harrison Truck Lines, Inc.
H. S. Anderson Trucking Company
Miller Truck Line, Inc.
Central Forwarding Inc.
Robertson Tank Lines, Inc.

Of Counsel:

JAMES, ROBINSON, FELTS
& STARNES
The 904 Lavaca Building
Austin, Texas 78701

DUE DATE:
June 12, 1968

CONSOLIDATED FREIGHTWAYS

June 4, 1968
File: H6-TA

Mr. C. L. Phillips
District Supervisor
Interstate Commerce Commission
Bureau of Operations
Room 350, American General Building
210 Northwest Sixth
Oklahoma City, Oklahoma 73102

Re: MC 129908 TA—AMERICAN FARM LINES

Dear Mr. Phillips:

This protest to grant of temporary authority in the above application, is filed by Consolidated Freightways Corporation of Delaware (MC 42487), 175 Linfield Drive, Menlo Park, California. Consolidated Freightways Corporation of Delaware, herein called "Consolidated" is a common motor carrier of general commodities, with exceptions not here pertinent, operating in interstate commerce over regular and irregular routes, as set forth in its certificate, Docket No. MC 42487 and subs.

Consolidated operates over regular and irregular routes throughout the States of Washington, California, Nevada, Arizona and Utah, as well as Kansas, Missouri, Illinois, Indiana and Kentucky, under authority held in Docket No. MC 52487 and subs. Points in Texas, Oklahoma and Arkansas, as well as some points in Missouri and Illinois are served by Consolidated Freightways Corporation of Delaware, Operator of Southern Plaza Express, Inc. (MC 10928), which is operated under temporary authority in MC-F-9041. Points in Kentucky are served by Consolidated Freightways Corporation of Delaware, Operator of Dance Freight Lines, Inc. (MC 107475) and Reliance Trucking Co., Inc. (MC 65897), which is operated under temporary authority in MC-F-9902. Certain points in California

are served by Consolidated Freightways Corporation of Delaware, Operator of Aetna Freight Lines, Inc. (MC 99196), which is operated under temporary authority in MC-F-9864. Points not on the routes served by Consolidated are served in joint-line service with reliable connecting carriers. Points in Louisiana are served in this manner. Joint routes, through rates and through trailer agreements are effective with hundreds of connecting carriers, thus assuring service to virtually any point. A folder generally depicting these operations is attached.

Consolidated maintains terminals throughout the states in which it is authorized to serve. The location of these terminals can be noted in the attached folder. Consolidated continually makes substantial investments in terminal facilities, so that it can offer a modern, responsive service to the shipping public.

Consolidated regularly operates plywood lined van trailers, suited to the transportation of general commodities including explosives, in its fleet of 10,000 units of equipment. Each terminal can quickly supply appropriate equipment as needed. Thus, a shipper need only contact his nearest terminal, and appropriate equipment can be furnished. The equipment is not fully utilized, but in the event that added traffic requires additional equipment, such equipment will be added. As indicative of its ability, Consolidated invested over $12,000,000 in revenue equipment during 1967.

Consolidated provides an abundance of service between the points here involved. There are numerous other interstate freight common carriers who can and do provide service between the points here discussed, in addition to the service of Consolidated. Clearly, there is an abundance of service available to the shipper supporting this application.

Consolidated employs a large sales force stationed throughout its nationwide system. It employs a representa-

tive, stationed at Washington, D. C., whose duties include sales liaison with various U. S. Government agencies, including the Department of Defense. The traffic within the instant application is actively solicited by Consolidated.

Consolidated opposes this application on several grounds: 1) *That there is no immediate and urgent need for the service proposed.* The circumstances that caused this application to be filed result from the injunction entered by the United States District Court for the Western District of Oklahoma which forbids applicant from engaging in "back-to-back" transportation service. To grant this application would allow applicant to perform that the Court has ordered otherwise illegal.

2) *That the statement of the supporting shipper is not in reasonable compliance with the rules in Ex Parte No. MC-67.* The shipper has not supplied the detailed statement of its needs, as required in Ex Parte No. MC-67. It can be understood, of course, that purposes of national security may prohibit the release of certain information. Consolidated asserts, however, that this does not mean the shipper can utterly fail to supply the information required by your Commission to reach an informed decision.

3) *That the purpose of applicant is repugnant to the decision of your Commission in Ex Parte No. MC-68.* In Ex Parte No. MC-68, *Removal of Truckload Lot Restrictions,* your Commission has held that where a motor common carrier holds a certificate of public convenience and necessity authorizing general commodities operations, such authority should not be limited to "truckload lots". As Consolidated understands the Commission's order, if a person is to engage in the business of transporting general commodities, as a common carrier by motor vehicle, then that person has the responsibility to transport all traffic tendered. How can applicant satisfy this responsibility? Particularly the responsibility for small shipments transportation? Apparently, it cannot. Applicant does not indi-

cate that it has a system of terminals, a fleet of city delivery equipment, or any of the required investment to engage in small shipments transport. Protestant therefore alleges that applicant merely desires to "skim the cream" and haul truckloads only.

4) *That the shipper is unable to show an immediate and urgent need.* In a letter dated 30 April 1968, from Mr. Curtis L. Wagner, Jr.; Chief, Regulatory Law Division; Headquarters; Department of the Army; Office of the Judge Advocate General; Washington, D. C. 20310 to Mr. Howard McCormack; General Manager; American Farm Lines Co-op; Oklahoma City, Oklahoma 73107, Mr. Wagner states, ". . . I have been asked to reply to *your request* for Department of Defense support . . ." (emphasis added) for the instant application. Protestant asserts that if shipper has immediate and urgent needs, it is curious that applicant should be making request of shipper for support.

Mr. Wagner further states ". . . the Department of Defense is not in a position to state that there would be insufficient or inadequate service without American Farm Lines." Protestant further notes that in a letter dated 15 May 1968, from Mr. Wagner to Temporary Authority Board, Interstate Commerce Commission, Washington, D. C. 20423, Mr. Wagner makes no statement that there ". . . would be insufficient or inadequate service without American Farm Lines".

Protestant must assert, therefore, that the shipper would in no way be injured should the instant application be denied.

5) *That the primary appeal of applicant, although unstated, is the offer of lower rates.* It has been Consolidated's experience that in nearly every instance where applicant proposes to transport traffic where it is in competition with other carriers, that it attracts this traffic through the offer of lower rates. Consolidated believes applicant

will pursue this rate-cutting policy if this application is granted. Consolidated must therefore assert that the temporary authority procedure was not devised to encourage rate wars, and that no purpose would be served by granting the instant application.

6) *That although shipper refers to "reduced transit times," it does not specify its needs.* Consolidated asserts that it provides good service, and that the service is fully responsive to the shipper's needs. Consolidated further asserts that it can provide a higher quality of service than that proposed by applicant.

Consolidated believes that it provides a service on which the shipper can rely. There are hundreds of other common carriers, which either singly or jointly, provide reliable service. There is no need for service of applicant; in fact, the shipper is unable to state that there would be insufficient or inadequate service without applicant. Thus, the application is wholly defective, and demonstrates no need for service.

Consolidated Freightways Corporation of Delaware respectfully submits, therefore, that the application should be denied.

Respectfully submitted,

CONSOLIDATED FREIGHTWAYS
CORPORATION OF DELAWARE

V. S. TYLER
Commerce Supervisor

DEALERS TRANSIT INC.

June 6, 1968

Mr. C. L. Phillips, District Supervisor
Interstate Commerce Commission
Room 350—American General Building
210 Northwest Sixth Street
Oklahoma City, Oklahoma 73102

Re: American Farm Lines—MC 129908 TA

Dear Mr. Phillips:

This letter and attachments will serve to register our most vigorous protest against the above captioned application for 180 day temporary authority between four far western states on the one hand, and on the other, nine middlewestern and southwestern states.

This protestant, a common carrier by motor vehicle operating under Certificate MC-4405 and subs thereto, in the course of its operations has had occasion to file and to protest many temporary authority applications, and we are frank to say that, considering the breadth and scope of this proceeding territory-wise and commodity-wise, we have never been involved in an application which so totally violates the letter and the spirit of the regulations which the Commission has promulgated in connection with the processing of temporary authority applications.

At the outset, it should be noted that the statutory authority which the Commission may act on an application for temporary authority, Par. 210 a (a) of the Interstate Commerce Act (49 U.S.C. Par. 310 a (a)) reads as follows:

> "To enable the provisions of service for which there *is an immediate and urgent need to a point or points within a territory having no carrier service capable of meeting such need,* the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common

carrier by motor vehicle, as the case may be." (Emphasis ours)

We should also like to call particular attention to Par. 10 of Form BOR 95 which sets forth the information required in shipper's letter of support for an application:

(a) Accurate description of commodity, quality and frequency of shipments to move, and consequences of denial of this application.

(b) Statement that there is / is not any carrier service available (rail or motor), either single line or by interline, between the points involved. If any service is available, indicate to what extent it has been used, what effort has been made to utilize it, whether carriers with authority have refused to furnish service, the manner and extent that existing services, if any, are inadequate, and detailed reasons as to why additional services are needed. If shipper's support is based on alleged failure of existing carriers to provide service, names and addresses of such carriers must be furnished.

We submit that the letter of support in the instant application fails completely to meet the minimum requirements set forth above. Further, we see nothing in the regulations which permit these requirements to be waived even though the support carries with it the prestige of the higher echelon of the Defense Department. There is not even the slightest allusion to existing service and the reasons why it is alleged to be unsatisfactory. It is axiomatic that a grant of temporary authority may be made only when an immediate and urgent need for service is present, which existing carriers are incapable of providing. Conspicuously absent from the letter of support is any reference to established service. and surely no one

can allege that such does not exist within the expanse of the territorial scope of the application.

Stripped of its superfluous verbiage the true motivation for this application is to be found in the concluding phrase of the second paragraph, "... *resulting in reduced cost to the Government.*" While any effort toward economy in government spending is to be commended, yet the question here involved is whether, considering the consequence of the policy of promoting this type of carrier, the end justifies the means. The emergence of the so-called farm co-op carriers operating under a minimum of regulatory restrictions is an increasingly potent factor in the total transportation picture, particularly as regards government traffic, is one that poses a direct threat to the sound transportation system which the Commission is charged with fostering. Whereas certificated carriers have, over a period of years, developed their service with a substantial investment of capital and labor, the farm co-op carriers through the device of the statutory exemption have been able, abetted by the full cooperation of the Defense Department, to skim off the cream of the available traffic to the detriment of the certified carriers who, if this policy is to be continued, will eventually be relegated to a standby position. Operations of the co-ops have become so flagrantly in violation of the basic rules under which such operations have been permitted that a court injunction was necessary in the case of the applicant to halt what is termed in the letter of support as "back to back" transportation.

One has but to review the various Watching Service reports issued almost daily, setting forth the government tenders which are being issued, to realize the impact of the farm co-ops on the total transportation scene. Pages upon pages of such quotations are being issued, undermining the rate structures—and the financial structures as well—of the certificated carriers legitimately in the field. The ultimate result is all too obvious to those who are

concerned with the continuation of a sound transportation system. The Commission is now being placed in the anomalous position of fostering such a system and at the same time destroying it by being requested to grant applications such as the instant one, which can only serve to render such system ineffective.

The present situation can be compared to the old fable of the camel's entry into the tent—first the nose under the flap with moves under the exemption, followed by the temporary authority application to bring in the front legs, to be followed, in turn, by a permanent authority application by which the hind quarter and the humps will make the entry complete—crowding out the legitimate carriers and completely usurping their functions. Having tasted the cut rates available the Department of Defense is now lending its weight to the destruction of the existing transportation system built up by the carriers under the Commission's regulations, with no thought being given to the long-term, nationwide effects of such a policy.

It is significant that the instant letter of support, at *first glance,* sets the stage for what is intended to be a telling argument by stating that the applicant was required to turn down 700 loads of Defense Department traffic. However, this unsupported statement is left with the obvious questions remaining unanswered—what was the consequence of this turndown and who then *did* handle the traffic? Obviously the traffic *was* handled; equally obvious is the fact that no criticism is voiced as to that service, which must be taken as proof that existing service *is* adequate. Had the writer of the supporting letter been apprised of any specific service deficiencies, notice thereof would surely have been included in his presentation as is in fact required in the previously quoted regulations. In brief, the Commission is now being asked to reward the applicant for its past illegal operations by investing it with the cloak of respectability in the form of appropriate authority.

It is of more than passing interest to note that the same office which now supports this application advised the applicant, under date of April 30, 1968, in answer to a request for support of an application: "However, the Department of Defense is not in a position to state that there would be insufficient or inadequate service without American Farm Lines." This quotation appears in the American Trucking Associations Government Traffic Bulletin under date of May 15, 1968 and has, therefore, become public information. The Department thus frankly acknowledged that in supporting an application it would actually have no legitimate basis for doing so.

An attempt is made in the letter of support to justify the application on the basis of a need for expeditious service and for "shortening the pipeline". The weight of this argument cannot survive careful analysis since by what reasoning can it be concluded that a farm co-op has any monopoly on the ability to afford expeditious service? Surely a co-op by its very nature and antecedents lacks the organization and managerial expertise to be found with an existing carrier whose routine dispatch procedures are already in operation and are geared to offer the most expeditious service possible within the established safety rules. The co-op is actually in a less favorable position to render expeditious service than is the certificated carriers. There can be but one conclusion in this regard—that the highly touted expeditious service can be achieved only at the sacrifice of safety, a matter which should be of the gravest concern to the Commission and to the Department of Transportation in their function of protection of the public. The entire matter of applicant's fitness is certainly one which should be of definite concern to the Commission.

Moving on to the particulars of the application, it is noted that unrestricted general commodity authority is sought. Without any exclusions or exceptions, the entire spectrum of commodities is embraced, including heavy and

cumbersome commodities, explosives, liquid and bulk commodities, motor vehicles—all in addition to what is normally included in the general commodity field. Any grant of the scope requested would most certainly vest the applicant with the most valuable authority extant between the territories involved.

This protestant's direct interest in this application lies in the field of heavy hauling plus motor vehicle transportation (including the transportation of trailers). We are confident that the regular general commodity carriers will seek to protect their interests through their own protests and we will, therefore, direct our protest to our own areas of major interest. We append hereto as Appendix A a complete list of our presently held certificates from the Interstate Commerce Commission under docket MC-4405 and subs, to which specific references will be made below.

Under Dealers Transit's authority on the movement of "commodities which because of size or weight require the use of special equipment", direct service is available as follows:

Between	And:	Authority
Kentucky, Indiana and Arkansas	California, Arizona, Nevada	Subs 391, 353 and 400
Oklahoma, Missouri and Kansas	California, Arizona, Nevada	Subs 384, 353 and 400
Texas and Louisiana	California, Arizona, Nevada	Subs 353 and 400

Parallel with the authority on "heavy and cumbersome commodities" is the so-called "15,000 pound" authority covering the movement of self-propelled vehicles of 15,000 pounds or more in weight. Such authority is included in Sub 403, also carried in Appendix A, where it will be noted that wherever "heavy and cumbersome" authority exists territorially there is concurrent "15,000 pound authority".

Additionally. through interline with other carriers, service between Illinois and the three western states named above, can be rendered through our Subs 416, 384. 353 and 400. The pertinent portions of each of the above named subs are checked in red in Appendix A.

With reference to the motor vehicle authority, it should be noted on page 5, Appendix A, that secondary truck-away authority on the movement of trailers is held between all points in the 48 contiguous states. This, of course, completely covers the territorial scope of the application. Added to this is the large number of specific initial authorities which are involved within the scope of the application. Such authorities are held in the grandfather order to the western states from Joliet, Ill.; Minneapolis, Minn.; and North Kansas City, Mo., eastbound from Los Angeles and Berkeley, California to one or more of the involved states. These authorities are checked in red in Appendix A, for ready reference.

In the interest of brevity, no attempt will be made to break down in detail the specific authority. Suffice it that the following subs do afford service from and to the territory involved on the initial movement of trailers:

Subs 263, Puente, Cal.; 271, Gregg Co., Tex.; 279, Vina Vista, Cal.; 286, Cambridge City, Ind.; 295, Fresno, Cal.; 304, Ft. Worth and Cleburne, Tex.; 317, Mansfield, La.; 321, Michigan City, Ind.; 323, San Antonio. Tex.; 324, Oklahoma City, Okla.; 326, Lufkin, Tex.; 329, Joplin, Mo.; 334, West Plains, Mo.; 339, Jerseyville, Ill.; 347, Augusta, Kas.; Minden, La.; 349, Fremont, Cal.; 351, St. Louis, Mo.; 352, Springfield, Mo.; 355, Baton Rouge, La.; 360, Matton, Ill.; 373, Modesto, Cal.; 374, El Paso Co., Tex.; 378, Los Angeles, Cal.; 379, Tulsa, Okla.; 386, Hayward, Cal.; 388, Riverside, Cal.; 394, Rockwall, Tex.; 395, Brady, Tex.; 406, Neodesha, Kas.; Monee, Ill.; 420, Bryan Co., Okla.; 425, Champaign, Ill.; 438, Stockton, Cal.; and 442, Ashdown, Ark.

In addition, Sub 389 provides authority on the movement of cargo containers from Ft. Wayne, Ind., Fresno, Vina Vista and Fremont, Cal., Gregg Co., Texas and Springfield, Mo.; Sub 336 provides authority on road construction machinery from Evansvillle, Ind.; and Sub 419 provides authority on the movememt of bodies, refuse containers, hydraulic hoists and lift gates from Bryan Co., Oklahoma.

Time and space do not permit a listing of all of the traffic moving via Dealers Transit, Inc. on the basis of the authorities named above, within the scope of the instant application. A conservative estimate would be that it would represent at least $2,500,000 in revenue, of which in excess of 50% would be movememt on government bills of lading. It, therefore, can be seen that any incursion by applicant into this area would be a most serious threat to the traffic potential of Dealers Transit, Inc.

The fact that this protestant is equipped to handle the traffic for which it is certificated, is evidenced by Appendix B which is a listing of equipment by type and ownership. It will be noted that a variety of trailer types—flatbeds, lowboy, drop centers, pole trailers—as well as specialized units such as for the movement of aircraft engines and boats—are available. The number of tractors appears proportionately greater than the number of trailers for the reason that, as indicated above, this protestant handles a considerable volume of deliveries where the trailer itself is the lading, such operation requiring only the use of carrier's tractor and driver. The large number of sleeper cabs should be noted, indicating the availability of expeditious service through use of two man driver teams.

Appendix C hereto is a listing of management personnel and terminal locations. It should be noted that of the states involved in this application terminals are located in the states of California (2), Indiana, Illinois, Oklahoma, Missouri (2), and Texas.

The movement of carrier's men and equipment is controlled by a central dispatch system headquartered at the central office at Chicago. The location of equipment is known at all times and through the operations of five "area controllers" it is possible to dispatch equipment to a given origin without necessarily deadheading such equipment in from the nearest terminal. This information becomes known to the area controllers through a teletype hookup between terminals and the main office and by inbound and outbound WATS telephone lines. The nature of protestant's operation is such that equipment is distributed throughout the nation and becomes available to points as needed through the effective control exercised by the central dispatch system.

This protestant regularly handles traffic requiring service over and above that involved in routine operations. Overdimension loads are frequent and are handled under the supervision of a special permit department whose efforts are devoted full time to the details involved in operations under permit. Escort cars, extra drivers, flagmen and guards are used regularly and are available through protestant's own facilities as well as from outside sources, as needed. Expeditious service through the use of sleeper cabs and second drivers is readily available, as previously indicated.

Safety of operation is a prime consideration of this protestant. To augment its efforts in this regard, four regional safety supervisors have been added recently with the primary function of implementing a driver selection and training program looking toward maximum safety in operations. It should also be noted that this protestant carries insurance considerably in excess of the requirements of the Commission, thereby affording both shipper and public the highest degree of protection.

In view of the foregoing, this protestant earnestly requests that the Commission follow the requirements which

it has set up for the handling of temporary authority applications and deny the instant request of American Farm Lines. There is not one scintilla of evidence which would support a grant of any authority whatsoever. Established carriers must necessarily look to the Commission to withstand the pressures of another arm of the government and to protect them against an action which would most certainly be detrimental to them and, more importantly, to the nation as well. Surely there is no more appropriate time than the present for the Commission to reaffirm the policy which is set forth so succinctly in *Smith and Solomon* 61 MCC 728 at page 752 when it said:

> "A certificate is a legal privilege. Unless we protect it, we destroy its value. We cannot expect motor carriers to carry out their obligations if we create situations which subvert their efforts to render adequate and efficient service. * * *
>
> As each such problem arises, a determination can be reached only after considering the existing carriers and the services which they are offering and entitled to offer to the public within the limits of their authority at this time. Again, it seems obvious that we cannot promote the cause of one carrier without considering the effect on other carriers and the public. Such a course would open the door to many problems which would damage the industry and the public interest, as well as defeat the objectives of the National Transportation Policy."

Very truly yours,

DEALERS TRANSIT, INC.

R. O. HOMBERGER

R. O. Homberger
Vice President—Traffic

MAURICE H. GREENE
ATTORNEY AT LAW
334 FIRST SECURITY BANK BUILDING
BOISE, IDAHO

June 7, 1968

Mr. C. L. Phillips, District Supervisor
Interstate Commerce Commission
Bureau of Operations
Room 350 American General Building
210 Northwest Sixth
Oklahoma City, Oklahoma 73102

Re: Temporary Authority Application. MC-129908 TA, American Farm Lines, 641 N. Meridian, Oklahoma City, Oklahoma, 73107 Federal Register—May 28, 1968, page 7796.

Dear Mr. Phillips:

I have been authorized by Garrett Freightlines, Inc., of Pocatello, Idaho, to protest the above-captioned temporary authority application of American Farm Lines, wherein it seeks authority to transport general commodities, including Class A and B explosives, restricted to traffic moving on government bill of lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada and Arizona.

Garrett Freightlines, Inc., (hereinafter referred to as Garrett), is a motor common carrier of property engaged in the transportation of general commodities, with the usual exceptions, over a network of regular routes in thirteen western states. It operates under certificates of convenience and necessity No. MC-263 and outstanding sub numbers. Included in this authority is authority to transport Class A and B explosives between Denver, Colo-

rado, on the one hand, and, on the other, Los Angeles and San Francisco, California, Portland, Oregon, and Seattle, Washington, including service at all intermediate points on U. S. Highway 91 between Salt Lake City, Utah, and Los Angeles, all intermediate points on U. S. Highway 40 between Wells, Nevada, and San Francisco, all points on U. S. Highways 30S and 30 between Salt Lake City, Utah, and Portland, Oregon, and all intermediate points over a network of regular routes between Pendleton, Oregon, and Seattle, Washington. In the area in which it operates Garrett serves hundreds of government installations and daily participates in the movement of traffic under government bills of lading. Included in this volume of traffic moving under government bills of lading is a tremendous movement of dangerous explosives that is received by Garrett at Denver, Colorado, through interline with carriers operating east of Denver and who serve military installations in the states of Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas. Garrett's major interline carriers on government traffic are Leeway Motor Freight, Interstate Systems, and Riss & Company. To give you some idea of the volume of dangerous explosives traffic Garrett has transported during the months of January and February, 1968, it received through interline at Denver over 150 truckloads of dangerous explosives, most of which originated in Oklahoma. This traffic was destined to the San Francisco Bay area and the Puget Sound area for shipment overseas. Garrett has handled as many as 18 truckloads of dangerous explosives in a single day through the Denver gateway.

Garrett also interlines a substantial volume of traffic moving under government bill of lading through the Minneapolis gateway. It interchanges traffic with approximately 24 carriers that operate between Chicago and Minneapolis.

Garrett operates in excess of 3,000 units of motor vehicle equipment. It operates some 70 terminals in the

area in the western part of the United States in which it operates. It has various types of trailers, such as flat-racks, vans and units equipped with mechanical refrigeration. All of its van equipment is suitable for and is used in the transportation of dangerous explosives.

Garrett regularly interchanges trailers with connecting carriers. It is a party to the National Motor Carrier Trailer Interchange Agreement. This interchange arrangement includes providing "exclusive use of the vehicle" service, which is regularly utilized by the government in the transportation of military traffic.

I have examined the letter of support by the Department of the Army, which is the only shipper supporting the temporary authority application of American Farm Lines. The letter does not comply with the regulations of the Commission concerning temporary authority applications. Particularly, the letter does not set forth what effort has been made to obtain the services of existing carriers and does not name any carrier that has refused service on government traffic when tendered to it. In fact, the only statement concerning traffic is that "American Farm Lines has been required to turn down more than 700 truckloads of Department of Defense traffic." This statement certainly does not indicate any absence of service for the transportation of government traffic or any inadequacy in the existing services. Garrett submits that because American Farm Lines was enjoined by the United States District Court for the Western District of Oklahoma from performing a type of transportation found by the court to be unauthorized certainly does not alone justify a grant of temporary authority to it. In the absence of any statement by the Department of Defense of inadequacy in the other motor carrier service available to it, the only purpose a grant of temporary authority to American Farm Lines would serve would be to circumvent the court injunction. Garrett respectfully submits that Section 210 of the Act providing for grants of temporary authority does

not contemplate that it should be used merely for the purpose of circumventing a court decree if there is ample motor carrier service available in the area in which temporary authority is sought.

Garrett operates only company-owned equipment, except in the interchange of trailers with other carriers. It has a fulltime safety director. Its drivers are specially instructed in the Commission's safety rules with respect to the transportation of dangerous explosives. Garrett has never been prosecuted for a violation of the Commission's safety rules and regulations.

A copy of this letter is being forwarded to the applicant and to its representative, Wesley L. Johnson.

Very truly yours,

MAURICE H. GREENE
Maurice H. Greene, Attorney for
Garrett Freightlines, Inc.
334 First Security Bank Building
Boise, Idaho, 83701

HERRIN TRANSPORTATION COMPANY

June 6, 1968

Mr. C. L. Phillips
District Supervisor,
Interstate Commerce Commission
Bureau of Operations
Room 350
American General Building
210 Northwest Sixth Street
Oklahoma City, Oklahoma 73102

Re: American Farm Lines. No. MC 129908 TA

Dear Mr. Phillips:

Herrin Transportation Company hereby protests the temporary authority application of American Farm Lines

as published on Page 7796, in the Federal Register of May 28, 1968.

Applicant seeks common carrier authority over irregular routes, transporting general commodities including class A and B explosives, restricted to traffic moving on Government Bill of Lading, between points in Kentucky, Indiana, Illinois. Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas on the one hand and on the other points in Washington, California, Nevada, and Arizona.

Protestant, Herrin Transportation Company, holds authority from the Interstate Commerce Commission in Dockets MC 1124 and Subs thereto to conduct operations, transporting general commodities, including class A and B explosives, within the states of Arkansas, Louisiana and Texas. A copy of Herin's Certificate is attached hereto. Herrin maintains terminal operations and facilities at Memphis, Tennessee; Beaumont, Dallas, Houston and Waco, Texas; Abbeville, Alexandria, Baton Rouge, Houma, Lafayette, Lake Charles, Monroe, New Orleans, and Shreveport, Louisiana; and Little Rock, Arkansas. Herrin maintains interchange agreements with all reliable motor common carriers at Memphis, Tennessee, Houston and Dallas, Texas where it daily interchanges general commodities including classes A and B explosives moving on Government Bill of Lading to and from points in Washington, California, Nevada, and Arizona.

Protestant alleges that it is ready, willing and able to transport this traffic described in the above filed application, and further submits that it is now transporting such traffic on a regular daily basis through interchange service with numerous connecting carriers over the Memphis, Dallas, and Houston gateways. A disruption of this traffic now enjoyed by the protestant, through the grant of the instant application, would be a disastrous consequence to the protestant's present operations. This traffic is sorely needed by the protestant for the conduct of its present

operations, schedules, and service to the shipping and receiving public, including Government Installations.

Protestant further submits that the application totally fails to comply with the Commission's special procedures for motor temporary authority with regard to supporting statements to be submitted by each person supporting the application. Herrin submits that any grant of the application in part or total would be contrary to law and with complete disregard to Commission's own rules of practice and procedure.

Protestant submits that the subject temporary authority application should be in all things, denied for the reason that there is no basis within law upon which such application can be granted. There is at present an abundance of motor common carriers service between points within the territory sought, and it has not been shown and can not be shown that an additional grant of authority is in the public interest. The issues involved herein are of such magnitude that if any disposition is to be made of them by the Interstate Commerce Commission, it should only be made after a full hearing with the opportunity preserved for all parties to clearly provide the Commission will all facts.

Wherein, premises considered, protestant respectfully request that the above styled application be in all things denied.

Your very truly,

HERRIN TRANSPORTATION COMPANY

GARY D. BRONSON
Director of Operating Rights

ICX

SETTING THE TREND IN TRUCKING
510 EAST 51ST AVENUE
DENVER, COLORADO 80216
PHONE (303) 825-7011

June 11, 1968

Mr. C. L. Phillips, District Supervisor
Interstate Commerce Commission
Bureau of Operations
Room 350, American General Building
210 Northwest Sixth
Oklahoma City, Oklahoma 73102

Re: American Farm Lines, MC 129908 (Sub-No. — T.A.)

Now comes Illinois-California Express, Inc., (hereinafter referred to as I.C.X.) a class I motor common carrier of general commodities with the usual exceptions, operating in interstate commerce under authority of Certificate No. MC-48958 and Subs. appended thereto (copy of which is attached), and files its protest to the above-referenced proceeding on the following grounds:

I

By the above-referenced application, applicant seeks authority to operate as a common carrier, by motor vehicle, over irregular routes. transporting: General commodities including classes A and B explosives, restricted to traffic moving on government bills of lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, Utah, California, Nevada and Arizona, for 180-days.

II

If granted, the authority sought would conflict with protestant's authority as shown by the attached copy of Cer-

tificate MC-48958 and Subs. under route ("Rt.") numbers 1-4, 9-18, 27-33, 35-37, 39-73, 76, 86-87, 149-150, and alternate routes in Subs. 92-95. (See map attached). If interlining with other reliable carriers is necessary for through movement, it could be accomplished at such terminal points as: Chicago, Illinois; Dallas, Amarillo, Lubbock, Witchita Falls and El Paso, Texas; Flagstaff, Arizona; Denver, Colorado; Los Angeles and San Francisco, California. I.C.X. regularly interlines traffic with a large number of carriers at all gateways. Examples of these are:

East Texas Motor Freight, Inc.
Texas Oklahoma Express, Inc.
Lee Way Motor Freight, Inc.
T.I.M.E. Freight, Inc.
D-C International, Inc.
Riss & Company
Navajo Freight Lines, Inc.
I.M.L. Freight, Inc.
Pacific Intermountain Express Company

III

Protestant, I.C.X., has invested a substantial amount of money in equipment and facilities to serve all classes of the shipping public which it is authorized to serve and in so doing conducts extensive interstate operations in the States of Texas, Colorado, New Mexico, Arizona, California, Nevada, Nebraska, Iowa and Illinois. Many of the points served by I.C.X. are port facilities and government installations.

In past years, I.C.X. has filed for appropriate authority to serve government installations in the area of its operations, even though these sites were often located at very inconvenient off-rout points. This is but one example of the many instances where I.C.X. has met the needs of the Department of Defense.

The following list is comprised of specific examples of I.C.X.'s authority to serve government installations:

Rt. 1	U.S. Army Training Site No. 3.
Rt. 5	Denver Federal Center.
Rt. 6	United States Atomic Energy Plant at or near Marshall, Colorado.
Rts. 8, 86 & 87	U.S. Engineer's Project No. 76.
Rt. 32	Glenn L. Martin plant near Waterton, Colorado.
Rt. 33	Glen Canyon Dam Site.
Rts. 35 & 36	Atomic Energy Commission plant site near Mercury, Nevada.
Rt. 38	U.S. Missile Launching Sites near Roswell, N.M.
Rt. 74	U.S. Missile Launching Sites in Chaves and Lincoln Counties, N.M.
Rt. 76	U.S. Missile Launching Sites in Texas.
Rt. 79	Pantex Ordnance Plant near Amarillo, Texas.
Rt. 79	Amarillo U.S. Army Air Force Base.
Rt. 80	U.S. Helium Plant near Soncy, Texas.
Rt. 81	Training Camp No. 2 near Moriarty, N.M.
Rt. 92	U.S. Air Training School near Roswell, N.M.
Rts. 123, 124 and 125)	Atomic Energy Commission's plant at Los Alamos, N.M.

Very little of the traffic tendered to I.C.X. on government bills of lading either originates or is destined to the points cited above. I.C.X. serves thousands of cities where

it receives traffic coming from or going to government installations. This traffic amounts to a considerable portion of I.C.X.'s total revenues. I.C.X. maintains a separate division in its traffic department, the sole responsibility of which is to file Section 22 rate quotations and investigate the need for greater authority or new services for the government. I.C.X. wants and actively solicits government traffic.

IV

I.C.X. operates and maintains 83 terminals and stations over its system and employs nearly 2,000 people on a full-time basis. I.C.X. utilizes a modern, well maintained fleet of 2,604 pieces of equipment stationed throughout its authorized territory, including several off-line trailer pools for the use by any off-line shipper. I.C.X. has invested a considerable amount of money in trailers built to the specifications of the A.E.C. for use in transportation of High Explosives and Radioactive Materials. These HEARM trailers are tangible proof that I.C.X. is willing to go to extremes to serve the Department of Defense as well as other governmental agencies.

I.C.X. is a party to the National Motor Equipment Interchange Agreement and freely interchanges equipment, with or without lading, with all other authorized carriers. Protestant's equipment is diversified and capable of safely and efficiently transporting any authorized commodity, including classes A and B explosives sought by the subject application. I.C.X's large fleet is not being fully utilized at the present time, but should the occasion ever arise where more equipment is needed, I.C.X. is financially able to meet that demand.

V

Protestant is actively serving the public convenience and necessity within its authorized territory, portions of which are involved in the instant application, on a daily basis

both in less-than-truckload scheduled service and in call and demand volume service. I.C.X. has over 30 years experience in the handling of general commodities and strongly denies that there exists any public need for the proposed operation.

VI

I.C.X. maintains a large sales force backed up by a staff of sales secretaries and customer service personnel for the purpose of soliciting general commodities. Particularly it employs a sales executive whose primary duty is the solicitation of government traffic on a nation-wide basis. A considerable amount of money has been invested in the facilities owned and operated by I.C.X. to serve the shipping public, and much of our equipment and facilities are not being used to capacity today.

VII

In Docket No. MC-F 9659, I.C.X. is the vendee, seeking to purchase the interstate authority for the transportation of general commodities, including Class A and B explosives, of Arizona Utah Express, Inc.. between Salt Lake City, Utah, and Phoenix, Arizona, tacking at Flagstaff. Prescott and Wickenburg with I.C.X's existing authority. Division Three has upheld the findings of the hearing examined, who recommended approval of the transaction.

In Docket No. MC-F 9994, I.C.X. is the vendee, seeking to acquire the interstate operating rights for the transportation of general commodities of California Motor Transport Co., Inc. In January, 1969, I.C.X. was granted temporary authority to conduct operations under the interstate operating rights of California Motor Transport Co. and is doing so at the present time. The California Motor Transport Co. authority joins the I.C.X. authority at Los Angeles, California. These authorities are portrayed on the attached map.

VIII

Inspection of the application form used by the applicant shows that applicant, by its president, Wesley S. Johnson, alleges that there is attached to the application a "letter or letters indicating shipper support, with detailed information as follows:

(a) Accurate description of commodity. quantity and frequency of shipments to move, and consequences of denial of this application.

(b) Statement that there is a carrier service available (rail or motor), either single line or by interline, between the points involved. If any service is available, indicate to what extent it has been used, what effort has been made to utilize it, whether carriers with authority have refused to furnish service, the manner and extent that existing services, if any, are inadequate, and detailed reasons as to why additional services are needed. If shipper's support is based on alleged failure of existing carriers to provide service, names and addresses of such carriers must be furnished.

(c) Shipper has not supported a prior application by applicant herein or any other person seeking authority to perform the service here proposed."

There is no letter attached to the application which contains information responsive to the statement quoted above!

There is, however, a letter attached which has been submitted by the Department of the Army but it fails to supply the necessary information. The quoted requirements are not permissive; they are mandatory. All applicants must furnish a letter of support which meets the above requirements before authority can be properly granted. The letter submitted by the Department of the

Army is so vague that it actually states the very reason why the sought authority should not be granted. The shipper says: "The services of this company have afforded the Department of Defense a meaningful measure, under practical conditions, of carrier capability in general. The shorter service is necessary as both a measure and a participant in 'shortening the pipeline.' A sound adequate transportation system is essential to the national defense. Accordingly, the military establishment supports as many carriers and routes as can be supported by the economy."

The Commission demands specificity of applicants and their supporting shippers but gets vague generalities. This cannot be condoned by a grant of authority. The "military establishment" must not be given carte blanche power to demand and receive "as many diverse carriers and routes as can be supported by the economy." Such a policy would be in direct contravention of the mandate of Congress as set forth in the National Transportation Policy.

I.C.X. will be the first to admit that the "military establishment" must have pipelines to move its vital military supplies, but at the same time, the "economy" must not be so burdened by unnecessary grants of authority that the entire regulated transportation industry is crushed.

I.C.X. met, without problems, the demands of the Department of Defense and the various branches of the U.S. Government in transporting billions of tons of various commodities. including Class A and B explosives, during national crises of World War II, Korean Police Action, Cuban Conflict, and all other local, national and world-wide situations.

VIII

Protestant feels it is imperative that the Commission deny the application in its entirety for two very important

reasons: The first is that the Commission must refuse to allow the "military establishment" to acquire a surplusage of carriers on such shallow justification as that tendered by the Department of Defense. To do otherwise would be to set a very dangerous precedent. The second reason is that the applicant must not be rewarded with such broad authority after having been a willing violator of the Commission's rules and regulations and a violator of the laws administered by the Commission. In Docket No. MC-C 5835 an investigation was instituted into the practices of the applicant and it has been found that American Farm Lines willfully violated the laws of the United States District Court for the Western District of Oklahoma (No. 67-487 Civil) enjoining the applicant from performing the same illegal carriage.

IX

I.C.X. respectfully urges the finding that there has been no showing by the applicant that the conditions and standards have been met which would justify the grant of authority requested. I.C.X. affirmatively denies that there is any need which cannot be met by existing carriers if given an opportunity.

I hereby certify that a copy of this protest has been mailed to the applicant's representative by first class mail, properly addressed and postage prepaid, on June 11, 1968.

ROGER SOLLENBARGER
Roger Sollenbarger
Counsel—Commerce

BEFORE THE

INTERSTATE COMMERCE COMMISSION

AMERICAN FARM LINES

MC-129908 TA

Protest of Merchants Fast Motor Lines, Inc.

To the Interstate Commerce Commission:

Merchants Fast Motor Lines, Inc. opposes the granting of the above captioned application, and in support thereof would show the following:

Statement of the Case

By application filed May 17, 1968, published at page 7796 of the Tuesday May 28, 1968 issue of the *Federal Register,* American Farm Lines, herein referred to as applicant, seeks authority to operate as a common carrier, by motor vehicle, over irregular routes, in the transportation of general commodities including classes A and B explosives, restricted to traffic moving on Government Bill of Lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and on the other, point in Washington, California, Nevada, and Arizona, for 180 days. The application is supported by the Department of the Army, Office of Judge Advocate General.

Preliminary

The applicant herein has conducted operations in the past under the contention that it is an agricultural cooperative association operating under an exemption afforded by law. Evidently, the applicant did not conduct its operations as a bona fide agricultural cooperative association as a United States District Court of the Western District of Oklahoma has issued a permanent injunction

against the applicant, its general manager and director, restraining them from conducting for-hire transportation operations in interstate or foreign commerce of any products not owned by one of the applicant's qualified members. In a companion proceeding, the applicant and its representatives were permanently enjoined from transporting explosives for the United States Government in connection with movement of nonexempt nonmember traffic. Obviously, the issuing of the permanent injunctions has precipitated the filing of the instant application. It is respectfully submitted that the issuance of a permanent injunction restraining a carrier from violating the law forms no basis for the granting of temporary authority.

Interest of Protestant

Merchants Fast Motor Lines, Inc., herein referred to as Merchants or protestant, is a motor common carrier of general commodities, with the usual exception, operating over numerous regular routes in the State of Texas, handling traffic directly between points on its own line and by interchange with other motor common carriers at common termini for the handling of traffic moving to, from, and through points on its own routes, on the one hand, and, on the other, points generally in the United States. Its operations are by virtue of Certificate MC-2228 and subs thereto, and generally are between Dallas and Forth Worth on the east; Houston and Beaumont on the southeast; Wichita Falls and Amarillo on the north; Lubbock, El Paso and San Antonio on the west; serving directly approvimately 350 points in the State of Texas. It operates in excess of 284 tractors, 223 straight trucks, and 518 trailers. It maintains station and terminal facilities at the principal points on and along its routes, including Abilene, Amarillo, Andrews, Bay City, Baytown, Beaumont, Big Spring, Brady, Breckenridge, Brownfield, Brownwood, Coleman, Colorado City, Comanche, Conroe, Dallas, Dublin, Eastland,

El Campo, El Paso, Forth Worth, Freeport, Gatesville, Hamlin, Hereford, Houston, Lamesa, Llano, Lubbock, Midland, Mineral Wells, Monahans, Odessa, Pampa, Pecos, Perryton, Post, Rotan, San Angelo, San Antonio, San Saba, Seagraves, Snyder, Spur, Stamford, Stephenville, Sweetwater, Waco, Weatherford, and Wichita Falls. It is not operating at full capacity, but has the ability to transport additional freight tonnage, including freight tonnage of the type covered by this application.

Merchants opposes this application insofar as authority is sought to transport general commodities and Classes A and B explosives moving on Government bills of lading between points in Texas, on the one hand, and, on the other, points in Washington, California, Nevada, and Arizona. Merchants is presently handling shipments of the involved commodities which move on Government bills of lading moving between the aforementioned States in interchange service in connection with various other common carrier motor carriers such as T.I.M.E. Freight, Inc., Western Gillette, Inc., Albuquerque-Phoenix Express, Inc., Illinois-California Express, Inc., Consolidated Copperstate Lines, Navajo Freight Lines, Inc., and Consolidated Freightways, Inc. This type of traffic is extremely important to protestant, and a granting of this application would place a carrier in the field authorized to perform operations in single-line service in competition with Merchants' existing joint-line service.

Grounds for Denial of Application

THE ISSUANCE OF A PERMANENT INJUNCTION RESTRAINING A CARRIER FROM VIOLATING THE PROVISIONS OF THE INTERSTATE COMMERCE ACT FORMS NO BASIS FOR THE GRANTING OF TEMPORARY AUTHORITY.

Brief and Argument

The grounds for the granting of temporary authority are clear and well defined, to wit, "An immediate and

urgent need justifying a grant of temporary authority will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service." 49 CFR § 1131.4(b)(2). The Commission's rules and regulations formulated for the handling of temporary authority applications list several ways in which "an immediate and urgent need" can be established: "a new or relocated plant, different method of distribution, new or unusual commodities, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to provide service, or comparable situations which require new motor carrier service before an application for permanent authority can be filed and processed." 49 CFR § 1131.4(b)(2). Of these methods, the applicant here is probably relying upon "a discontinuance of existing service." Protestant respectfully submits that this ground is not applicable to the instant application.

A federal district judge has determined that applicant was conducting operations without appropriate authority from the Interstate Commerce Commission under the guise of an exempt agricultural cooperative association. The court's order in this respect is final and appealable. Protestant has no information as to whether or not the applicant here will appeal the court's order issuing the permanent injunctions. It is readily apparent, therefore, that applicant is attempting to use the vehicle of a temporary authority application to immediately reinstitute operations which the federal district court has held to be unlawful. The "service" provided by applicant under the guise of an agricultural cooperative association is not a service that can be considered as forming a basis for the granting of the authority requested herein. To the contrary, these prior operations should be held against the applicant as constituting evidence of unfitness to provide the requested service.

In any event, Merchants along with its connecting-line carriers are presently equipped and stand ready, willing, and able to provide any service for the handling of the involved commodities that may arise. The rule is well-established and codified in the Commission's temporary authority rules and regulations that the desire of a shipper for single-line service in lieu of existing interchange or connecting carrier service will not warrant a grant of authority, be it temporary or permanent. See *Pine Tree Transport, Inc., Ext.-Frozen and Canned Fruits,* 54 MCC 669, 674-675 (Ent. Comm. 1952), and 49 CFR § 1131.4(b)(4). In order for applicant to receive a grant of temporary authority herein, it must "clearly establish" that Merchants and its connecting-line carriers are not capable of, or have failed in, meeting the "reasonable immediate and urgent needs of the shippers or receivers between the points or territories and in respect of the commodity or commodities in volved." 49 CFR § 1131.4(b)(4). Merchants knows of no complaint in its service and knows of no reason why it cannot meet the "reasonable immediate and urgent needs" of the Department of the Army, Office of Judge Advocate General. Clearly, applicant has failed to sustain its statutory burden of proof as well as the burden of proof imposed upon it by the Commission's rules and regulations. Accordingly, the application must be denied.

If there is indeed a genuine need for the service proposed, then let applicant make its case at an oral hearing on a permanent application. The temporary authority provisions of the Interstate Commerce Act were not intended to be invoked indiscriminately by carriers, such as applicant attempts to do here. To the contrary, section 210a(a) of the Act is designed to meet a very particular and isolated situation, and enables the Commission to grant authority without hearing or other proceeding so as to enable the provision of service for which there is "an immediate and urgent need to a point or points or within a territory having no carrier service capable

of meeting such need." The provisions of the statute are twofold, and the applicant's burden is twofold, in that a need must first be established and then it must be shown that existing carriers cannot meet that need. Here, applicant has failed on both counts. Its obvious reliance upon operations conducted in the past under the guise of an agricultural cooperative association is not evidence of an immediate and urgent need for the service proposed here. Furthermore, applicant has failed to show that the territory it seeks to serve is without carrier service capable of transporting the involved commodities, and Merchants has affirmatively shown that its service is available and that it is capable of transporting the involved commodities. Under these circumstances, the authority sought here must be denied and applicant relegated to the filing and prosecution of a permanent authority application if it desires to do so.

Conclusion

WHEREFORE, Merchants Fast Motor Lines, Inc. prays that the application of American Farm Lines, MC-129908 TA, be denied insofar as authority is sought to operate between Texas, on the one hand. and, on the other, Washington, California, Nevada, and Arizona, and for such other and further relief to which it may show itself to be entitled.

Respectfully submitted,

REAGAN SAYERS
CLAYTE BINION
RAWLINGS, SAYERS & SCURLOCK

Century Life Building
P.O. Box 17007
Forth Worth, Texas 76102

Attorneys for Merchants Fast Motor Lines, Inc., Protestant

Due Date: June 12, 1968

BEFORE THE
INTERSTATE COMMERCE COMMISSION

DOCKET No. MC-129908 TA

IN THE MATTER OF: AMERICAN FARM LINES

Protest

Comes now MIDWEST EMERY FREIGHT SYSTEM, INC., (MIDWEST EMERY) and LITTLE AUDREY'S TRANSPORTATION COMPANY, INC., (LITTLE AUDREY), protestants, and file this their protest to the above-captioned application.

Each protestant hereunder is actively engaged in the performance of service in interstate commerce, by motor vehicle, pursuant to certificated authority issued to it by the Interstate Commerce Commission. MIDWEST EMERY is a motor common carrier of general and specialized commodities, primarily perishables, operating pursuant to authority issued in Docket No. MC-114019 and various subs thereunder. Attached hereto and designated Appendix "A" is a summary of the operating authority issued to MIDWEST EMERY by the Interstate Commerce Commission. As pertinent to the instant application, MIDWEST EMERY is authorized to transport foodstuffs, raw and manufactured, between all points in Indiana and Illinois among other states, pursuant to Item 34 in its Sub-No. 38 Certificate (Appendix A, p. 4). Further, on page 28 of Appendix A, under paragraph 180 (Sub-No. 94), MIDWEST EMERY is authorized to transport general commodities, with the usual exceptions, from Chicago, Illinois, and points in the commercial zone thereof, to Denver, Colorado. At Denver, MIDWEST EMERY has inter-line arrangements with several carriers, such as Navajo Freight Lines, Ringsby Truck Lines, and Garrett Freight Lines, under which lading would be handled in through trailer inter-line service to the western states sought in the instant application.

LITTLE AUDREY'S is a motor common carrier primarily of specialized commodities, operating pursuant to authority

issued to it by the Interstate Commerce Commission in No. MC-108053 and various subs therunder. Attached hereto and designated Appendix B is a summary of the operating authority issued to LITTLE AUDREY'S by the Interstate Commerce Commission. As relevant to the instant proceeding, LITTLE AUDREY'S is authorized to operate between all or specialized points and areas in Indiana, Illinois, Missouri, Oklahoma and Kansas on the one hand, and, on the other, all or specified points or areas in Washington, California, Nevada and Arizona. For example, pursuant to its Sub-Nos. 6, 10 and 18 authorities, LITTLE AUDREY'S is authorized to transport meats, meat products, meat by-products, and articles distributed by meat packing houses, from points in Illinois, Missouri, Oklahoma and Kansas to points in Washington, California, Nevada and Arizona. Under its Sub-No. 24 authority, LITTLE AUDREY'S is authorized to transport frozen foods from Lafayette, Indiana, to all points in California. Under the authority set forth in its title and Sub-No. 14, 27 and 31 operating rights, LITTLE AUDREY'S is authorized to transport a wide variety of food items from all or specified points in the involved western states to points, collectively, in Texas, Kansas, Illinois, Indiana and Missouri.

It is clear from an examination of the operating rights of protestants herein, as reflected in Appendices A and B, that these carriers can provide a substantial portion of the transportation service sought in the instant application.

Terminal facilities are maintained by each of the protestants herein within the territory sought to be served by applicants, and suitable and sufficient equipment is available for the performance of such service as may be required by the shipping public within the territory. Specifically, MIDWEST EMERY maintains complete terminal facilities at specified points in Illinois, Indiana and Kansas, as pertinent to the instant application, and as reflected in Appendix C attached hereto. Appendix D reflects the terminal facilities maintained throughout its system by

Little Audrey's, including facilities at points in Illinois, Kansas, California and Washington. In addition, as reflected on this appendix, Little Audrey's maintains check points at sites in Nevada, California, Arizona, and Washington.

MIDWEST EMERY operates a total of 806 tractors, 1,094 trailers of various types and capacities, and 831 mechanically refrigerated units, all as more specifically described on Appendix E hereto. Appendix F reflects the equipment operated by LITTLE AUDREY'S and indicates a total 25 tractors and 26 insulated refrigerator semi-trailers in the fleet of this carrier.

It is difficult to be specific with respect to a precise scope of the service provided by each protestant herein that would conflict with the instant proposed service, in light of the fact that the statements filed in support of the subject application are couched in the most vague and general of terms. However, MIDWEST EMERY constantly solicits traffic within the scope of the instant application to the extent of its authority, and has participated in the movement of some LTL lading to this extent. Likewise, LITTLE AUDREY'S constantly solicits business within the scope of its operating rights, and at present is handling volume meat shipments from its authorized origin, as reflected in Appendix B, to points in Washington and California. These shipments move to points in the western states for further overseas movement as well as directly to military installations in these states, even though such shipments are not handled on government bills of lading.

Protestants herein are ready, willing and able to perform reliable and expeditious transportation services for the movement of both LTL and truckload shipments with their existing equipment, facilities and highly trained staff within the scope of their operating authorities. If additional equipment is required, these carriers are in a position to and would furnish such needed and additional equipment

to accommodate any increase in any shipper's volume of traffic.

Irregardless of the service shown to be presently available from MIDWEST EMERY and LITTLE AUDREY'S, however, it is respectfully submitted that the instant application for temporary authority should be denied for the reason that the applicant has failed to comply with the very specific requirements set forth in said application (B.O.R. 95) for certain information as a condition precedent to a consideration of the request for such authority. Specifically, Item 10 of the application form for temporary authority requires that the supporting shipper's statement provide the names and addresses of existing carriers who have either failed or refused to provide for service alleged to be needed, and the reasons for any such failure or refusal. Here, the supporting statement filed by the Department of the Army (dated May 5, 968) makes no statement whatsoever with respect to available service in the affected territory and the extent, if any, to which such service has been utilized, or attempted to be utilized, and found wanting in any material respect. Without the required information, it is impossible for the Commission to determine whether "an immediate and urgent need" exists for the proposed service.

Further, while applicant is seeking to transport virtually all commodities, there is nothing in the statements of either applicant or the supporting shipper to indicate in even the most general manner the nature of the particular commodities sought to be transported. Without identifying a representative number of particular items sought to be transported, the request for enormously broad commodity authority represented by the instant application cannot be supported by any of the statements filed in connection therewith. It would actually appear, from an examination of these statements, that the only items of interest to the supporting shipper would be "military sup-

plies" consisting of Class A and Class B explosives (See, e.g., p. 1 shipper statement).

Further, protestants herein are prejudiced by applicant's failure to provide the required information with respect to the origins and destinations of any of the traffic involved in the instant application. In applications for temporary authority seeking to serve a territory rather than a point or points, evidence supporting the "immediate and urgent need" for service to enough specific points to warrant the requested territorial grant is required. Here, however, while statewide authority is sought between points in approximately thirteen states, not one specific origin or destination is identified, and, as noted above, the nature of the involved traffic is not disclosed with respect to an identification of the particular commodities.

These material gaps in applicant's presentation must act to defeat its proposal. Nowhere on the instant record are the circumstances which create "an immediate and urgent need" for the requested service disclosed. All we are told is that applicant had been providing service for the shipper pursuant to the agricultural cooperative "exemption" set forth in the Interstate Commerce Act, which service ceased as a result of recent court action in which the applicant had been found to be engaging in for-hire transportation service without appropriate operating authority (*Munitions Carriers Conference, et al.* v. *American Farm Lines, et al.*, No. 67-487 Civil, U. S. D. C., W. D. Oklahoma, February 20, 1968). Certainly, the continuance of applicant's service prompted the supporting shipper to file the instant statement requesting that applicant be granted temporary authority to continue this service. This desire, without more, hardly satisfies the Commission's rules and regulations, to the extent noted above, with respect to the issuance of temporary authority. Certainly, past operations standing alone, and without any indication of the extent to which existing service in the area has been utilized

if at all, do not constitute "an immediate and urgent need" for the continuance of such service which would warrant a grant of temporary authority, especially when such past operations were illegal as in the instant proceeding. Further, there is nothing peculiar or unique about the handling of traffic moving on government bills of lading that constitutes a peculiar service factor not available from existing carriers, such as protestants herein, in the affected territory.

WHEREFORE, protestants MIDWEST EMERY and LITTLE AUDREY'S pray that the subject application for temporary authority be denied in its entirety for the reasons stated above.

Respectfully submitted,

MIDWEST EMERY FREIGHT SYSTEM, INC.
LITTLE AUDREY'S TRANSPORTATION COMPANY, INC.
Protestants

By DAVID I. HARFELD
David I. Harfeld,
Attorney for Protestants

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C.

DOCKET No. MC 129908TA

IN THE MATTER OF THE APPLICATION OF

AMERICAN FARM LINES,
AMERICAN FARM LINES, 641 North Meridian,
Oklahoma City, Oklahoma 73107

Protest of Navajo Freight Lines, Inc.

Comes now Navajo Freight Lines, Inc., hereinafter referred to as Navajo, operating under Certificate of Public Convenience and Necessity No. MC 76032 and related subs,

of 1205 South Platte River Drive, Denver, Colorado, 80223 and enters its Protest to the above application notice of which appeared in the Federal Register of Tuesday, May 28, 1968 at Page 7796 and in support thereof states:

1. That Applicant seeks authority to operate as a common carrier by motor vehicle over irregular routes transporting:

> General commodities, including Classes A and B explosives, restricted to traffic moving on government bill of lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and on the other, points in Washington, California, Nevada, and Arizona for 180 days.

2. Attached hereto as Exhibit A is an abstract of the authorities issued to Navajo by the Interstate Commerce Commission. For convenience of reference, arbitrary route numbers have been added, and the following routes are in conflict with the instant application:

Arizona—2, 3, 28, 33, 43, 44, 69, 72, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 116, 117, 128, 140.

California—2, 4, 21, 45, 125, 146, 147, 151.

Illinois—15, 24, 25, 41, 146, 150, 157.

Indiana—41, 42, 144.

Kansas—15, 58, 59, 60, 61, 62, 63, 74, 75, 76, 78, 121, 134, 138.

Missouri—15, 24, 32, 75, 78, 133, 134, 135, 136, 137, 141, 150.

Nevada—28, 86, 87.

Oklahoma—56, 58, 61, 71, 79, 139.

Texas—5, 6, 23, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 62, 64, 80, 96, 97, 99, 110, 122, 123, 141.

In addition to the foregoing regular route, irregular route and alternate route authorities, the following specific explosives authorities are pertinent to this Protest: routes 16, 17, 99, 103. So as to graphically illustrate the various general commodities authorities of Navajo and their explosives authority as well, there is attached hereto as Exhibit B and incorporated herein by reference a map showing the routes and operations of Navajo Freight Lines, Inc. as well as the locations of the various government installations in the affected states (including Department of Defense installations) to which Navajo provides either direct or interline service.

3. Protestant operates a modern well maintained fleet in excess of 2,400 units stationed throughout its authorized territory, most of which is suitable for the type of traffic proposed in the instant application. Further, this fleet is not being fully utilized at the present time, and Protestant is financially able to acquire additional equipment to meet the needs of the shipping public, including the Department of Defense.

4. Section 210a (a) of the Interstate Commerce Act states, in part, as follows:

> "To enable a provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need the Commission may . . . grant temporary authority for such service by a common carrier."

Pursuant to that statutory authority, the Commission in its regulations Part 1131.4 (b) (2) has stated "An immediate and urgent need justifying a grant of temporary authority will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service." Navajo is a party to virtually

hundreds of routings in connection with other authorized common carriers providing dependable through transportation services to and from all government installations within the states named above. In addition, Navajo is a party to the National Equipment Interchange Agreement. In order to demonstrate the extent of interest in this traffic and to further demonstrate that there is available to the Department of Defense a wide variety of routings with numerous concurring authorized carriers between these points, there is attached hereto as Exhibit C a copy of Rocky Mountain Motor Tariff Bureau, Inc., Agent, U. S. Government Quotation No. 16, which is currently in force. Examination of this rather voluminous document will reveal that Navajo, which is identified therein as Carrier No. N1800, or in certain instances N180, is a participant in many of these routes which are too numerous for specific mention. Such traffic as Navajo is currently handling for the Department of Defense between the involved points constitutes a significant part of the revenues upon which Navajo is dependent to maintain the level of service which it is able to offer to the shipping public.

5. Applicant's application and the supporting statements submitted by the Department of the Army, are fatally defective and fail to conform to the statutory requirements cited above. Specifically, there is no claim of an immediate and urgent need and no claim that there is a lack of carrier service capable of meeting whatever need exists. The Department of the Army letter indicates that since February 20, 1968 American Farm Lines, Inc. has been required by the U. S. District Court injunction to turn down more than 700 truckloads of Department of Defense traffic. There is no contention, however, that the Department of Defense has had any difficulty in finding other carriers to transport these 700 truckloads. This deficiency is not the result of mere oversight. There is attached hereto as Exhibit D a copy of a letter from the Department of the Army to Mr. Howard McCormack,

General Manager, American Farm Lines Coop dated 30 April 1968 wherein it is stated "However, the Department of Defense is not in a position to state that there would be insufficient or inadequate service without American Farm Lines".

6. Protestant further questions the fitness of the Applicant to receive from this Commission operating authority. The supporting statement of the Department of Defense indicates that prior to February 20, 1968 Applicant was transporting more than 300 truckloads of freight per month for the U. S. Government without appropriate authority from this Commission. The United States District Court for the Western District of Oklahoma in Civil Action No. 67-487 has found that such transportation was in fact without authority from the Interstate Commerce Commission and was conducted in violation of the law. The Commission on its own motion has instituted an investigation into the operations and practices of the Applicant in Docket No. MC-C-5835. Under such circumstances and conditions, no operating authority should be issued to the Applicant pending the final determination of the issues in the above noted proceeding.

Wherefore, Protestant respectfully prays that the application be denied.

Respectfully submitted,

NAVAJO FREIGHT LINES, INC.

By WILLIAM E. KENWORTHY
William E. Kenworthy
Counsel

P.I.E
PACIFIC INTERMOUNTAIN EXPRESS
1417 CLAY STREET
P.O. BOX 958
OAKLAND, CALIF. 94604
TEL. (AREA CODE 415) 452-1616

June 7, 1968

Mr. C. L. Phillips
District Supervisor
Interstate Commerce Commission
Bureau of Operations
Room 350, American General Building
210 Northwest Sixth
Oklahoma City, Oklahoma 73102

Re: Docket No. MC-129908 TA, American Farm Lines
General Commodities Including Classes A and
B Explosives

Dear Mr. Phillips:

Pacific Intermountain Express Co., a Nevada corporation, with its home office at 1417 Clay Street, Oakland, California 94604, protests the above-referenced application filed by American Farm Lines seeking temporary authority as a common carrier to transport over irregular routes general commodities, including Classes A and B explosives, moving on government bills of lading, between points in Kentucky, Indiana, Illniois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Arizona and Utah, for 180 days, and in support of its protest respectfully shows:

1. That protestant is authorized in Docket No. MC-730 and numerous sub numbers thereto to transport, primarily over regular routes, general commodities with certain ex-

ceptions between numerous points in Kentucky, Indiana, Illinois, Missouri, and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, and Utah. It is authorized to transport Classes A and B explosives over regular routes and, to a lesser extent, over irregular routes in the states of Indiana (Chicago, Illinois Commercial Zone points), Illinois, Iowa, Nebraska, Missouri, Kansas, Colorado, Wyoming, Utah, Idaho, Washington, California, and Nevada. In addition, it is authorized to transport liquid chemicals in bulk between points in Texas, on the one hand, and, on the other, points in the eleven western states, including Washington, California, Nevada, Arizona, and Utah. Regular daily interline service, including through trailer interchange, is maintained with several hundred reliable connecting motor common carriers at P-I-E terminal points whereby joint-line service is available to the public and to the Department of Defense for the transportation of general commodities, including Classes A and B explosives, between *all points* in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas on the one hand, and, on the other, *all points* in Washington, California, Nevada, Arizona, and Utah.

2. Protestant owns and operates in excess of 6,000 vehicles of all kinds and types required for the movement of general commodities, including Classes A and B explosives, and for the movement of bulk liquid chemicals. It maintains terminals in Kentucky, Indiana, Illinois, Missouri, Texas, Kansas, Washington, California, Nevada, and Utah. Each terminal is equipped, maintained, and staffed to assure an efficient service to the public, and to provide dispatching and supervisory control over protestant's operations both local and line haul.

3. Protestant has provided and is providing service to the supporting shipper on a regular daily basis for the transportation of general commodities, including Classes A and B explosives. It believes, and therefore alleges,

that all requests for service in the movement of U.S. Government shipments have been complied with in a reasonably satisfactory manner.

4. The service of protestant is offered to the supporting shipper by direct solicitation at Military Traffic Management and Terminal Service (MTMTS) headquarters in Washington, D. C., and at regional MTMTS offices. Representatives of protestant also maintain regular contacts on military installations and General Services Administration offices located from coast to coast. In addition, protestant offers its service through local and national advertising media; by tariffs lawfully on file with the Commission; by special rate quotation publications furnished the U. S. Government pursuant to Section 22, Part 1, of the Interstate Commerce Act; and by periodically furnishing U. S. Government offices, including MTMTS headquarters in Washington, D. C., a complete file showing the facilities of protestant available to and offered to the supporting shipper. Protestant desires and needs additional traffic in the involved territory and will increase its vehicular and terminal facilities as traffic demands may require.

Background of Applicant

Applicant, an Oklahoma corporation, has purportedly been in business as a farm cooperative somewhat in excess of three years. It has reportedly provided transportation for nine companies, which also appear to be cooperatives, listed as follows:

1. California Canners and Growers, San Francisco, Calif.
2. MFA Co-Op, Columbia, Missouri
3. Nebraska - Iowa Non Stock Cooperative
4. Neosho Valley Creamery Co-op, Erie, Kansas
5. Producer's Creamery, Chillicothe, Mo.

6. Producer's Creamery, Springfield, Mo.

7. Southwest Milk Producers, Texas

8. Tri Valley Growers, Stockton, Calif.

9. North Texas Producers, Texas

The total transportation provided by applicant for the above-named cooperative for the year 1965 amounted to $554,168.73, for the year 1966, $683,445.12, and for the year 1967, $1,418,289.67. Its transportation for other undisclosed persons or firms for the same years amounted to, for 1965, $516,508.71, for 1966, $633,438.99, and for 1967, $886,847.19. In addition, during 1967 applicant derived total revenues amounting to $1,321,645.70 for U. S. Government transportation. Applicant's transportation for other than the group of cooperatives thereby increased from $516,508 in 1965 to $2,208,492 in 1967. Percentage-wise the non-cooperative transportation during the same period increased from 48 per cent to 60 per cent of applicant's gross revenues.

Applicant has indicated its operations have been conducted under the exemption provisions of Section 203 (b) (5), Part II of the I. C. Act. Such exemption relates to cooperative associations as defined by the Agricultural Marketing Act, 12 U.S.C. 1141, reading in part as follows:

"(a) As used in this subchapter, the term 'cooperative association' means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: Provided, however, that such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requiremnts. First: That no member

of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second: That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third: That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association."

The United States District Court for the Western District of Oklahoma in *Munitions Carriers Conference, Inc. et al v. American Farm Lines et al,* No. 67-487 Civil, January 26, 1968, ruled that the round trip (back to back) movements of U. S. Government shipments by American Farm Lines was beyond the exemption provisions and therefore unlawful. A permanent injunction subsequently issued February 20, 1960. The Interstate Commerce Commission, Bureau of Enforcement, intervened in that proceeding through its Fort Worth, Texas regional counsel. The above-quoted transportation revenues of applicant are from the court records in the 67-487 proceeding. Official and judicial notice is hereby requested of that court record.

Applicant continued its transportation of U. S. Government shipments but on a one-way-haul and return-empty-movement-of-vehicle basis. The same U. S. District Court in No. 68-148 Civil, found such transportation unlawful, and again granted a permanent injunction May 20, 1968.

Your Commission has, on its own initiative, in Docket No. MC-C-5835, *American Farm Lines et al, Investigation of Operations and Practices,* instituted a complaint proceeding with the applicant herein as respondent. Hearing thereon, assigned at Oklahoma City May 13, 1968, was postponed pursuant to a request by counsel for respondent.

Support For Temporary Authority

By notice published in Federal Register, Volume 33, No. 104, May 28, 1968 at Page 7796, the supporting shipper is designated as "Department of the Army, Office of Judge Advocate General, Washington, D. C." The supporting letter dated May 15, 1968 over the signature of Curtis L. Wagner, Jr., Chief, Regulatory Law Division, fails in all material respects in meeting the stringent requirements under Section 210(a)(a) Part II of the I.C. Act. The letter seemingly ignores the minimum supporting statement requirements of Ex Parte MC-67, *Special Procedures for Motor Temporary Authority,* (98 MCC 483 at pages 486-487), which specify as follows:

"Any such supporting statement must contain at least the following information:

(1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved).

(2) Points or areas to, from, or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested).

(3) Volume of traffic involved, frequency of movement and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue, and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.

(10) Name and address of motor carrier who will provide service and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's docket number, if known, and state whether such application was granted or denied and the date of such action, if known."

Argument

It is submitted that the Commission should summarily reject the application for non-compliance with its own rules and regulations.

The rules prescribed in Ex Parte 67 are procedural rules. The Courts have universally and consistently ruled that procedural rules are binding upon the parties to which they apply and also upon the administrators who issue them. *Service* v. *Dulles*, 354 U.S. 363, 372, 388-389; *Arcardi v. Shaughnessy*, 347 U.S. 260, 265; *Bridges* v.

Wixon, 326 U.S. 135, 163, and *Coleman* v. *Brucker*, 257 Fed. 2d. 661, where at page 662 it was held:

> "• • • And in *Service* v. *Dulles*, 1957, 354 U.S. 363, 372, 77 S. Ct. 1152, 1 L. Ed. 2d. 1403, the Court sustained Service's contention 'that the Secretary's action is subject to attack under the principles established by this Court's decision in United States ex rel *Arcardi* v. *Shaughnessy*, 374 U.S. 260 (74 S. Ct. 499, 98 L. Ed. 681), namely, that regulations validly prescribed by a government administrator are binding upon him as well as the citizen, and that this principle holds even when the administrative action under review is discretionary in nature.' "

Likewise, in *Atwood's Transport Lines, Inc.* v. *U. S.*, 211 Fed. Supp. 168, affirmed per curiam, 373 U.S. 377, it was stated that:

> "Rules and regulations promulgated by Governmental establishments pursuant to statutory authority have the force and effect of law, and concededly are subject to same tests as statutes. • • •"

See also *Arcardi* v. *Shaughnessy, supra*, and *Boynton* v. *Pedrick*, 136 Fed. Supp. 888, at page 890.

It is readily apparent that Ex Parte 67 does not merely direct shippers as to what they should include in their statements. The language is definite and emphatic that a shipper statement must contain at least this information. This required information represents therefore the minimum which shippers must supply. Failure to provide this information denies the Commission the necessary facts upon which it must predicate its decision. It has direct relation to the applicable statute, Section 210(a)(a) of the Act, which provides:

> "To enable the provision of service for which there is an *immediate and urgent need* to a point or points

or within a territory having no carrier service capable of meeting such need, the Commission *may, in its discretion and* without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be." (Emphasis added)

Insofar as this proceeding is concerned, this statutory provision contains two important requiremnts, namely, (1) the specification of applicant's required burden of proof and (2) the Commission's discretionary power to act once this burden has been met. Therefore, it is imperative that any applicant seeking temporary authority must first demonstrate an immediate and urgent need for the proposed operation to a point or points or within a territory having no carrier service capable of meeting such need.

The facts surrounding the events leading up to the instant application compel a conclusion that applicant has been operating in interstate commerce as a common carrier by motor vehicle without benefit of a certificate or permit as required by law and has been operating outside the statutory exemption. Such has been the findings in a United States District Court in the several proceedings heretofore cited. Applicant is named as a respondent in an investigation proceeding before your Commission now awaiting hearing. Applicant has been aided substantially in its operations, found to be unlawful, by the supporting shipper. That same shipper now would have the applicant rewarded for having disregarded the statutory guidelines established by 49 USC 303(b)(5) and 12 USC 1141(j), *supra*. The existing circumstances and past activities of American Farm Lines must forceably advance the question of applicant's fitness to receive a grant by your Commission of any authority.

Conclusion

Applicant, having failed to establish an immediate and urgent need for service which existing rail and motor carriers are unable or unwilling to provide, must have its application denied.

Wherefore protestant requests that the application be denied on the basis that (1) an immediate and urgent need has not been demonstrated, (2) that the minimum statutory requirements as specified by the applicable statute and rules and regulations thereunder have not been satisfied, and (3) that applicant is not shown to be fit to be granted the authority sought.

Respectfully submitted,

PACIFIC INTERMOUNTAIN EXPRESS CO.
EARL J. BROOKS
Earl J. Brooks
Director of Commerce

Earl J. Brooks
P. O. Box 958
Oakland, Calif. 94604

RED BALL MOTOR FREIGHT, INC.
3177 IRVING BOULEVARD P. O. BOX 47407
DALLAS, TEXAS 75247
OFFICE OF THE GENERAL COUNSEL

June 10, 1968

Mr. C. L. Phillips
District Supervisor
Interstate Commerce Commission
Bureau of Operations
Room 350, American General Building
210 N.W. Sixth Street
Oklahoma City, Oklahoma 73102

Re: Docket MC-129908 TA
American Farm Lines
641 North Meridian
Oklahoma City, Oklahoma
Federal Register May 28, 1968,
at Page 7796; and republished
Federal Register of June 8, 1968,
at Page 8523

Dear Mr. Phillips:

This is the protest of Red Ball Motor Freight, Inc., herein called Red Ball, to the above-captioned application which was published in the Federal Register under date of May 28, 1968, at page 7796.

Scope of the Application

By the instant application, authority is sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting *general commodities, including classes A and B explosives,* restricted to traffic moving on Government Bills of Lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah and Arizona, for a period of 180 days.

The Interest and Operations of Red Ball

Red Ball is a motor common carrier of general commodities, with the usual exceptions, operating a daily service over regular routes in the states of Colorado, New Mexico, Texas, Oklahoma, Louisiana, Arkansas, Missouri, Kansas, Tennessee, Mississippi and Alabama. In conducting such operations, Red Ball serves directly 1590 points. It renders a daily service, both scheduled and call and demand, between all the points and places which it is authorized to serve. Such service is conducted pursuant to authority granted to it by the Interstate Commerce Commission under Certificates of Public Convenience and Necessity in MC-2229 and subs thereof. There is attached hereto, and made a part of this protest for all purposes, a multipage brochure entitled "Direct Points of Red Ball Motor Freight, Inc." Included within this brochure is a straight-line map of the operations of Red Ball showing the major cities and towns in its 11,000 miles of certificated operations. There is also listed, alphabetically by state, all of the points which Red Ball serves direct. On the last page of this brochure, there is listed in alphabetical order the more than 90 terminals which Red Ball operates. There is also attached a copy of Red Ball's certificate.

The specific interest of Red Ball in this proceeding is as follows:

Red Ball is at the present time (and has over a long period of time) handling shipments on a daily basis moving on government bills of lading. These movements consist of both general commodities and classes A and B explosives. Red Ball originates traffic at points and places served by it directly in the states of Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, destined to points and places in Washington, California, Nevada, Utah and Arizona. Such traffic, both less truckload, and truckload, is interchanged by Red Ball in Denver, Colorado, one of the major terminals of Red Ball, with Pacific Inter-

mountain Express, Inc., Garrett Freightlines, Inc., Ringsby Truck Lines, Inc., Consolidated Freightways Corporation and D-C International, Inc. In addition to this, Red Ball interchanges traffic which it originates in its area destined to California at Dallas, Texas, with Western Gillette, Inc., Illinois-California Express, Inc., Consolidated Copperstate Lines, Inc. and Braswell Motor Freight Lines, Inc. Additionally Red Ball interchanges traffic which it originates in its area at Amarillo, Texas, destined to the West Coast with Navajo Freight Lines, Inc. and Illinois-California Express. Red Ball also receives, particularly over its Amarillo, Texas, gateway, both general commodities and class A and B explosives originating in Oklahoma destined to the West Coast from Lee Way Motor Freight, Inc., Yellow Transit Freight Lines, Inc. and in Dallas, Texas, it also receives interchange traffic originating at points and places served by Lee Way Motor Freight, Inc., Yellow Transit Freight Lines, Inc. and Texas Oklahoma Express, Inc.

This government traffic, that is, traffic moving on government bills of lading consisting of general commodities and classes A and B explosives, is extremely important traffic to Red Ball. The revenue derived therefrom enables Red Ball to maintain its level of service to the shipping and receiving public, including the United States Government. Any diversion of this traffic and the revenue derived therefrom will have a material effect upon the ability of Red Ball as well as its connecting line carriers to carry on its service to the public generally.

Red Ball operates 671 over-the-road tractors and 1531 over-the-road trailers. Additionally, it operates 696 pick-up and delivery trucks and 65 delivery trailers. The equipment is not being operated at capacity.

There Is No Basis in Law or in Fact for a Grant of Temporary Authority

The application for temporary authority is supported by a letter signed by Curtis A. Wagner, Jr., Chief, Regulatory Law Division of the Department of the Army. The letter from Curtis A. Wagner, Jr. does not state that there is an absence of existing service nor does it allege that there is an inadequacy of service, both of which are jurisdictional requirements for a grant of temporary authority under the specific provisions of the Interstate Commerce Act. The sole issue made by the letter from Curtis A. Wagner, Jr. is that the Department of Defense, and it is assumed the Department of the Army, has in the past used the services of American Farm Lines pursuant to an exemption from economic regulation. It is then pointed out, and correctly so, that recent United States court action has resulted in the stoppage of this service which was being performed by American Farm Lines as an exemption from economic regulation. It is then simply stated that because of this it is the desire of the Department of Defense and the Department of the Army that temporary authority be granted so that American Farm Lines may continue to handle such shipments. Since the time that the injunction was granted by the United States court against the operations of American Farm Lines, the Department of the Army, acting through the statement of Curtis A. Wagner, Jr., alleges that it has had to turn down more than 700 truckloads of materials which would have been transported by American Farm Lines. It makes no allegation, and indeed the Department of the Army can make no such allegation, that such 700 truckloads of traffic was not transported by the existing carriers expeditiously and efficiently.

The statement contained in the application from the president of American Farm Lines is nothing more than a statement to the effect that it has in the past transported

government traffic moving on government bills of lading under a claimed exemption from economic regulation. Since the United States District Court in Oklahoma has enjoined such operation, it now seeks authority, in the form of temporary authority, to move such traffic without there being present the necessary elements in order to justify a grant of temporary authority under the Act. All on earth that American Farm Lines desires to do is to attempt, through a grant of temporary authority, to make legal that which the United States District Court in Oklahoma has declared illegal. There is absolutely no basis under the law, and under the facts submitted, to justify a grant of temporary authority because there is no allegation, and indeed no such allegation could be made, that the existing services and facilities of the existing carriers are in any way inadequate.

Insofar as protestant Red Ball is concerned, the territory here involved is covered by tariffs to which it is a party. These tariffs are the Rocky Mountain Motor Tariff Bureau tariff which publishes in tariff form United States Government quotations, which include published quotations on general commodities, freight of all kinds and classes A and B explosives, showing both origins and destinations and all of the connecting routes. In addition, all carriers, including Red Ball, can, and still do, file individual Section 22 quotations.

The Commission's Special Procedures for Motor Temporary Authority has the effect of statutes under the rules of filing of applications:

> "(c) Supporting statements. Each application for temporary authority must be accompanied by a supporting statement(s) designed to establish an immediate and urgent need for service which cannot be met by existing carriers . . .". "Any such support-

ing statement must contain at least the following information:

(1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved).

(2) Points or areas to, from or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested).

(3) Volume of traffic involved, frequency of movement and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue, and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing motor, rail or water cariers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.

(10) Name and address of motor carrier who will provide service and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application form permanent or temporary authority covering all or any part of the desired service, give the carrier's docket number, if known, and state whether such application was granted or denied and the date of such action, if known."

It is noted that the above rules or statutes are mandatory and not permissive. Therefore, applicant must accompany its application with supporting statement containing 100% of the above information. Protestant alleges that the applicant has completely failed in this respect. It has not adhered to any of the above rules except a portion of (10) by furnishing the name of the motor carrier who will provide service and is filing application for temporary authority. The allegation of "desirability" certainly does not establish an immediate and urgent need for service which cannot be met by existing carriers. Applicant has not named one single carrier that is not performing the service desired. It cannot do so.

Summary

As has been pointed out previously in this protest, in addition to the services of Red Ball, there are numerous other carriers operating over all or a portion of the territory involved in these proceedings. These carriers, like Red Ball, are general commodity carriers and are daily engaged in the handling of freight having been shipped on government bills of lading. Red Ball is daily engaged in the handling of such traffic and actively solicits such traffic from the Department of the Army and the Department of Defense. It is presently participating in the movement of such traffic and needs to continue in the participation of such traffic in order to insure its financial ability to continue to serve the general public.

Prayer

WHEREFORE, Red Ball Motor Freight, Inc. prays that the application for temporary authority of American Farm Lines be in all things denied.

Respectfully submitted,

CHARLES D. MATHEWS
Charles D. Mathews

Vice President and General Counsel
Red Ball Motor Freight, Inc.
P.O. Box 47407
Dallas, Texas 75247

RISS
Express Service at Freight Rates

C. L. Phillips
District Supervisor
Interstate Commerce Commission
Room 350
American General Building
210 N.W. Sixth
Oklahoma City, Oklahoma 73102

Re: American Farm Lines MC129908TA

Protest of Riss & Company, Inc.

Comes now Riss & Company, Inc., a common carrier by motor and submits this, its protest to the application of the above for temporary authority for 180 days to transport "General Commodities, including Classes A & B Explosives, restricted to traffic moving on government bills of lading between several states in the midwest and points on the west coast."

Riss has its general office in Kansas City, Missouri and holds certificates granted to it by the I.C.C. in Docket No. MC 200 and various subs thereto. The Certificate

is extensive and extends generally from Denver on the west to Boston on the east and Dallas, Texas and Louisville, Kentucky on the south with many certificated routes and points in the area described. Within the whole certificate and area described, Riss can transport general commodities, not including Class A & B Explosives, for the U.S. government. In addition Riss can transport in the Certificate granted by the I.C.C. general commodities, including Class A & B Explosives for the U.S. government in the area included in the triangle between Oklahoma, Kansas, Missouri, Illinois, Iowa, Nebraska and Colorado points. The Riss I.C.C. Certificate is extensive and bulky and consists of 53 pages. Instead of attaching a copy of the Certificate to this Protest, we attach a map of the Riss certificated routes which graphically depicts the part authorizing the transportation of general commodities with exceptions, and in addition shows, marked in red, the routes and authorities wherein Riss is authorized to transport Class A & B Explosives. One copy of the whole entire Riss Certificate is attached to the original copy of this Protest. In the event any parties desire a copy of the entire Certificate, the writer will be pleased to furnish one.

Riss operates approximately 615 closed van trailers owned by the company and in addition are taking delivery of 100 new closed vans from Strick Company at the present time, and beginning this week delivery on 100 new Trailmobile closed van trailers purchased by Riss has started and will be completed in two weeks.

Insofar as pertinent herein Riss maintains terminals at Oklahoma City, Dallas, Texas, Kansas City, Missouri, St. Louis, Missouri, Chicago, Illinois, Joliet, Illinois, Grand Island, Nebraska, Denver, Colorado, Louisville, Kentucky, all of whom are involved in handling the transportation of Class A & B Explosives for the U.S. government.

Riss maintains a separate government division that specializes in transporting Classes A & B Explosives and other government traffic and is ready, willing, and able to

handle all the loads tendered to us by the U.S. government, and indeed, much aditional traffic of that nature if it would be tendered to us.

Riss solicits this traffic from the various U.S. Government Agencies and, in fact, to response to recent solicitation for additional traffic from the U.S. Government Routing Agencies, received a response dated May 10, 1968 from the Military Traffic Management and Terminal Service who handles the routings for the U.S. government, a copy of which is attached and made a part hereof. It is to be noted "the Department of Defense is not in a position to state that there would be insufficient or inadequate service without American Farm Lines."

The instant application for temporary authority is under Section 210A (a) of the Interstate Commerce Act which provides in essence that a requirement necessary before the grant of temporary authority is to prove an "immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need".

The support from the so-called shipper to this application is from the Department of Army, Office of the Judge Advocate General in a letter to the Temporary Authority Board of this Commission dated May 15, 1968. A careful reading of this support letter shows that there has been no statement to support the allegation there is an absence of service or an inadequacy of service on the part of the common cariers to handle the freight for the Department of Defense.

As a matter of fact the regulations governing the participation of the military services in proceedings before transportation regulatory bodies, chapter 105, recites that: "The Commander, Military Traffic Management and Terminal Service is responsible for determining the Department of Defense interest in proceedings before transportation regulatory bodies such as the Interstate Commerce Commission." With respect to the instant appli-

cation it is interesting to note that the letter of support comes from the Office of the Judge Advocate General of the Department of Army rather than from the Military Traffic Management Agency, which agency is the proper party to determine the participation in an application of this nature.

Riss has a safety department and is fully cognizant and observes strict compliance with all the safety rules and regulations of the I.C.C., Department of Transportation, and the various states in which it operates. All drivers are thoroughly screened and processed and their prior records checked previous to their being allowed to drive in the service of Riss. Riss has a direct telephone line connecting the general office to each of its terminals, and the terminals to each other. It is fundamental that until Riss and the other permanent certificated common carriers have been utilized in transporting the involved commodities and have been found to not be able to render reasonably adequate service, that no further certificates, temporary or otherwise, need be granted to any other applicants. We respectfully submit on behalf of Riss that there has not been a showing of any immediate or urgent need of this proposed service, and further that Riss is able to handle much more additional traffic for the supporting shipper and has been in the business of transporting these commodities for many years, has increased its trailer fleet with trailers equipped to handle the commodities involved, and is in a position to handle much more traffic of this nature. Insofar as the destination states are concerned, Riss interlines with a multitude of certificated common carriers at Denver, Colorado for delivery to the destination states. We respectfully request the application for temporary authority be denied.

Respectfully submitted,

Riss & Company, Inc.
IVAN E. MOODY
Ivan E. Moody
Vice President/General Counsel

BEFORE THE

INTERSTATE COMMERCE COMMISSION

BUREAU OF OPERATIONS

OKLAHOMA CITY, OKLAHOMA

DOCKET No. MC 129908 TA

AMERICAN FARM LINES

641 North Meridian

Oklahoma City, Oklahoma 73107

NOW COMES T.I.M.E. FREIGHT, INC., Post Office Box 2550, Lubbock, Texas, and files this its protest to the above styled application and would show the Commission that it is a common carrier motor carrier operating generally over regular routes; however, over some irregular routes transporting general commodities but including general commodities including classes A and B explosives, restricted to traffic moving on Government Bill of Lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand; and on the other, points in Washington, California, Nevada, and Arizona, either direct or in connection with reliable connecting lines.

American Farm Lines, by its application in MC 129908 TA, filed May 17, 1968, and appearing in the FEDERAL REGISTER, Vol. 33, No. 104—Tuesday, May 28, 1968, seeks temporary authority to transport general commodities including classes A and B explosives, restricted to traffic moving on Government Bill of Lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand; and on the other, points in Washington, California, Nevada, and Arizona, for 180 days.

As to the portent of this application, it is in conflict with T.I.M.E. Freight, Inc.'s authority (MC 35320 and related

subs thereto—copy attached) to transport general commodities with the usual exceptions on a direct basis between certain points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Texas, Oklahoma and Kansas on the one hand; and on the other, points in California and Arizona. In addition, protestant transports traffic indirectly between Louisiana and points in Washington, California, Nevada and Arizona by reliable connecting lines.

T.I.M.E. Freight, Inc. has terminals in Paris, Tennessee serving southwestern Kentucky; Evansville, Indiana; Chicago, Illinois; St. Louis, Missouri; Springfield, Missouri; Kansas City, Missouri (serving Kansas City, Missouri and Kansas City, Kansas); Little Rock, Arkansas; El Paso, Texas; Lubbock, Texas; Tulsa, Oklahoma; Oklahoma City, Oklahoma; Sacramento, California; Los Angeles, San Francisco, California; Tucson, Arizona; and Phoenix, Arizona. In addition, T.I.M.E. Freight, Inc. operates terminals in Dallas, Texas and San Antonio, Texas. This portion is being operated under temporary authority in MC-F-9822 copy attached.

Protestant has 496 over-the-road tractors and 1,489 over-the-road trailers, which are not being utilized and stand ready, willing, and able to transport and perform the services sought in the instant application.

The Commission's Special Procedures for Motor Temporary Authority have the effect of statutes under the rules of filing of applications:

> "(c) Supporting statements. Each application for temporary authority must be accompanied by a supporting statement(s) designed to establish an immediate and urgent need for service which cannot be met by existing carriers . . .". "Any such supporting statement must contain at least the following information:

(1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved).

(2) Points or areas to, from, or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested).

(3) Volume of traffic involved, frequency of movement and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue, and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.

(10) Name and address of motor carrier who will provide service and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's docket number, if

known, and state whether such application was granted or denied and the date of such action, if known."

It is noted that the above rules or statutes are mandatory and not permissive. Therefore, applicant must accompany its application with supporting statement containing 100% of the above information. Protestant alleges that the applicant has completely failed in this respect. It has not adhered to any of the above rules except a portion of (10) by furnishing the name of motor carrier who will provide service and is filing application for temporary authority. Such language "desirability" certainly does not establish an immediate and urgent need for service which cannot be met by existing carriers. Applicant has not named one single carrier that is not performing the service desired.

T.I.M.E. Freight, Inc. avers that applicant has failed in its burden of proof in that it has not (1) established an immediate and urgent need for service which cannot be met by existing carriers and (2) has failed by not meeting the mandatory statutory requirements as set out in the Commission's rules.

Protestant's interest in the application is that protestant, T.I.M.E. Freight, Inc., has handled traffic for the shipper in the past and knows of no complaints as to its service. Should the application be granted it would materially change the competitive situation and divert traffic from T.I.M.E. that it is presently handling or could be handling and such traffic is of vital interest to this protestant.

WHEREFORE premises considered, T.I.M.E. Freight, Inc. prays the Commission that the application be denied.

Respectfully submitted,

FRANK M. GARRISON
Attorney for Protestant,
T.I.M.E. Freight, Inc.
Post Office Box 2550
Lubbock, Texas 79408

June 11, 1968

Mr. C. L. Phillips
Interstate Commerce Commission
Bureau of Operations
American General Building
210 N.W. 6th Street
Oklahoma City, Oklahoma 73102
Re: American Farm Lines, Oklahoma City, Oklahoma MC 129908 TA, Federal Register May 28, 1968, page 7796

Dear Sir:

Please accept this protest to the above application on behalf of Tri-State Motor Transit Co. of P.O. Box 113, Joplin, Missouri.

This application includes a request to transport Classes A and B Explosives, moving under Government Bills of Lading between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and on the other, points in Washington, California, Nevada and Arizona. This protest is restricted to the identified transportation of Explosives.
As evidenced by the attached authorities, Appendix I, your protestant holds authority to transport in direct single-line service traffic between the majority of the requested states as well as participate in two-line interchange service offering to provide service between all requested points except Louisiana.

In connection herewith your protestant operates strategically located terminal facilities throughout the involved territory which include explosive interchange lots, maintenance facilities, washing facilities, dispatch, etc., near Richmond, Kentucky; Seneca, Illinois; Joplin, Missouri; Texarkana, Texas; Maytown, Washington; Concord, California; Idaho Falls, Idaho; and Louviers, Colorado. These facilities are so located as to provide equipment pools within relatively short distances of any principal shipping

origin involved in this temporary application. All these facilities excepting only Concord and Idaho Falls (which are leased) are owned and represent investments measured in the hundreds of thousands of dollars. For example, Seneca has some 500 acres; Joplin has 350 acres; Texarkana has 120 owned and 120 leased with option to purchase; Louviers has 157 acres. The Louviers, Maytown and Texarkana terminals have revetted interchange facilities affording protection on explosive loads either for the purposes of interchanging or for purposes of holding while the power equipment can be serviced and/or inspected. Seneca provides a revetted interchange facility with an additional or larger one under construction and nearing completion. Your protestant holds out to transport Classes A & B Explosives on a direct basis either in single-line or in multi-line service between all requested points excluding Louisiana as heretofore stated. Reference is made to Docket No. MC-F-9417 Tri-State merger DeTar Distributing which has been approved by Interstate Commerce Commission and is presently pending consummation which would add Louisiana as a state being provided direct service. As an illustration, your protestant may transport between the Crane Naval Ammunition Depot in Indiana on the one hand, and, on the other any point in the states of Washington, California, Nevada, Utah andArizona. By combining its Sub No. 141 with its Sub 57 over a Seneca or Ottawa, Illinois gateway, it may transport between any point in Illinois and any point in Washington, California, Nevada, Utah and Arizona. This is an incomplete listing but is representative and descriptive of the certificated ability of your protestant to provide the entire requested service on Classes A & B Explosives.

The extract of authorities, Appendix I, has been marked in green to identify the more pertinent ones. The Sub 132 contains some 40 pages but authorizes most principal highways in Illinois, Indiana, Ohio, Kentucky, and North Western Tennessee. The 132 physically connects at West

Memphis, Arkansas, St. Louis, Missouri; Seneca, Illinois and Wolf Lake, Illinois with other authorities.

Your protestant operates some 305 sleeper cab two-man power units and has some 600 trailers all of which are company owned plus 62 under lease purchase, all trailers are adapted to the handling of explosives and are available to meet any requirement. This equipment is not being fully utilized and stands ready, willing and able to transport and perform the services sought in the instant application insofar as Classes A & B Explosives are concerned. Traffic subject diversion Appendix II.

Your protestant practices providing set-out trailers or establishing equipment pools at strategic locations particularly for the convenience of the United States Government. These include Crane, Indiana; Blue Grass Arsenal, Kentucky; a pool at its Texarkana terminal and extensive pools at the overseas or ocean loading points of Concord, California and Maytown, Washington.

Your protestant is familiar with the letter by the Department of Army purporting to support this request for temporary authority and states it fails to show any deficiency in either the existing services or that of your protestant. This letter further fails to reflect that your protestant cannot effect and is not presently providing the same or better reduced transit times between the involved points. In fact, your protestant has developed terminal facilities, set-out equipment pools for the sole purpose of being able to provide a service of logistical effectiveness to the government. Your protestant believes and alleges that of the more than 1200 shipments referred to by the Department of Army, that any which may have involved Classes A & B Explosives were denied your protestants and other certificated carriers similarly situated and has resulted in non-regulated transportation which practice, if continued, will end in destroying, fragmentizing, and denying a national transportation system by highway

adequate to meet the needs of the commerce of the United States and of the National Defense. In fact, Chapter 105 of the Defense Regulation (Ch. 18. AR 55-3551) NAUSUP Pub 444 Ch. 18/C 18 HFM etc. provides support of this type will only be undertaken when:

a. There is no carrier authorized

(or)

b. The service of authorized carrier is inadequate

The Department's position would appear to fail to even meet its own regulations.

Your protestant believes that the military establishment is in effect stating it desires to create an unregulated rate war and will do so through supporting as many diverse carriers and routes as it can and feels this will result in an immediate reduced cost to the government without giving consideration to the eventual chaotic conditions which would be created thereby by reverting from regulated transportation providing an adequate system for defense, to the wars of the jungle.

The exemption as referred to by the Department of the Army states in effect that a true cooperative may transport government traffic or nonmember traffic when proceeding for a member load or returning from a delivery of a member load in order to avoid and eliminate an empty trip. The District Court of the United States for the Western District of Oklahoma in its decision enjoined the American Farm Lines from providing a total transportation service by dedicating itself to serving the Department of Defense without (1) appropriate authority from the Interstate Commerce Commission or (2) the same being related to its member business. The statement that American Farm Lines has been required to decline over 700 loads evidences by innuendo that the existing carriers were able to provide all required service

for at no place does the Department state there was an absence of service or any inadequacy of existing service.

The entire tenure of this support is absolutely contra to the precepts which the Interstate Commerce Commission has long stood for, namely, the offering of a reduced rate in order to secure shipper's support completely fails to establish an immediate and urgent need for which there is either an absence or inadequacy of service.

> "The Commission xxx will not approve the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operations by existing carriers" see MR & R Trucking Co., Ext.—Birmingham, 105 MCC 69, 80.

Your protestant has read the protests as provided by T.-I.M.E. Freight Inc. where on pages 2 and 3 certain fundamental failures to comply with existing reguiations of this Commission are pointed out. In the interest of brevity your protestant hereby adopts these same specific deficiencies in meeting the mandatory statutory requirements.

Wherefore, having fully answered the application, through showing its ability to provide the required service, that it is providing service within the territory and that any grant of authority as herein requested (which would include Classes A & B Explosives) would be detrimental to your protestant, would result in a deterioration of that service which it has heretofore provided the public, as well as the Department of Defense; your protestants prays: that this application be denied in its entirety as (1) failing to evidence a public need as (2) failing to show that the existing carriers are not adequate and able to provide all the required transportation and (3) failing to evidence an inability on the part of the existing carriers to be able

to meet all the requirements of the Department of Defense.

Respectfully submitted,

Tri-State Motor Transit Co.
By: GEORGE F. BOYD
George F. Boyd
President-General Manager

June 17, 1968

Mr. C. L. Phillips, District Supervisor
Interstate Commerce Commission
Bureau of Operations, Room 350
American General Building
210 Northwest Sixth
Oklahoma City, Oklahoma 73102

Dear Mr. Phillips:

Please accept this letter and six (6) copies as a protest to the application of AMERICAN FARM LINES, Docket No. MC 129908 TA as published in the Federal Register of May 28, 1968 and as corrected in the June 8, 1968 issue. The application is so general that it cannot be determined what commodities are to be transported and the purpose of this protest is to protect our authority to transport motor vehicles within some of the area covered by the application.

United Transports Inc., in Docket MC-71902 and subs 35 and 63 thereto is authorized to transport in secondary truckaway service, automobiles, trucks, tractors, cabs, chassis, bodies, and parts thereof between points in Missouri, Texas, Oklahoma, Kansas and Texarkana, Arkansas on the one hand and on other points in Arizona. Through connecting lines, United can render service to all of the other states involved in the application. United maintains terminals in Kansas City, Missouri; Tulsa and Oklahoma City, Oklahoma; Floydadla, Houston and Irving, Texas at which 196 truckaway units and drivers are based. There

drivers and equipment can be dispatched anywhere within the territory that United is authorized to serve.

If this applicant intends to handle motor vehicles, the grant of this application would create a new service resulting in substantial competition to protestants between points where there is already keen competition for the available traffic.

Protestant hereby certifies that a copy of this protest has been on this day forwarded by first-class mail to Mr. Wesley L. Johnson, 641 North Meridian, Oklahoma City, Okla. 73107.

Respectfully submitted,

United Transports Inc.

by ERIC L. SPITLER
Eric L. Spitler, its Vice
President—Traffic & Sales
21990 Greenfield Road
Detroit, Michigan 48237

Dated at Detroit, Michigan, June 17, 1968

BEFORE THE

INTERSTATE COMMERCE COMMISSION

American Farm Lines—Temporary Authority

MC-129908 TA

Protest of Western Railroads

COME NOW the Western Railroads specified in the appendix hereto, and for Protest to the application in the captioned proceeding, state:

In Ex Parte No. MC-67, *Motor Carrier Temporary Authorities,* 98 M.C.C. 483, the entire Commission promulgated rules to govern the filing, processing and determination of applications for temporary authority. For the

most part, they are no more than a restatement of statutory and case law.

As here pertinent, they provide that temporary authority will be granted only upon a clear showing that there exists an immediate and urgent need of service from and to specified points or areas having no carrier service capable of meeting such need. Immediate and urgent need

> "will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service. Such a showing may involve a new or relocated plant, different method of distribuition, new or unusual commodities, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to provide service, or comparable situations which require new motor carrier service before an application for permanent authority can be filed and processed." (240.4(b)(2)).

Supporting statements of shippers are an indispensable part of applications for temporary authority. They must reflect, among other things, definite need of a broad territorial grant, where sought; volume and frequency of movement; how long the asserted need is likely to continue; recital of consequences if service is not made available; whether efforts have been made to obtain the service from existing motor, rail or water carriers and the dates and results of such efforts; and, the names and addresses of existing carriers which have either failed or refused to provide the service, together with reasons given for any such failure or refusal. (240.2(c)).

Where, as here, precise information is required to enable the Commission properly to determine the issues presented, a governmental agency stands in the same position as a commercial shipper.

In *National Freight, Inc., Extension—Commodities in Bulk*, 84 M.C.C. 403 (1961) Division 1 said:

> "Turning to the issue of the classified nature of this information, it is not our duty to inquire into the internal rules and security regulations of GSA. We are aware that security regulations have at times placed restrictions upon the free publication of transportation data; however, such restrictions cannot serve as a substitute for the information which is requisite to a proper determination of public convenience and necessity. In *Riss & Company, Inc., Extension—Explosives*, 64 M.C.C. 299, 328, the Commission said:
>
> > 'While we recognize certain disabilities of the military in the presentation of evidence, we must, in order to carry out our duty under the Act, be furnished with sufficient facts on which to base our conclusions with respect to the need for motor service. Unless such facts are made available, we cannot act intelligently in disposing of the issues, and particularly, where as here, the problems presented are varied, complicated, and controversial. Where necessary facts are lacking, we are not warranted in making allowances for the failure to produce them or in according the Department of Defense or any other shipper special consideration, except perhaps under some unusual circumstances.' "

In this proceeding we have the ironic situation wherein one federal agency is purportedly supporting an operation that has been held by another federal agency—the judiciary—to have been unlawfully conducted.

The only supporter of the exceedingly broad application is the Department of Defense. That support is voiced by the Secretary of the Army by means of the letter of May 15, 1968, signed by the Chief, Regulatory Law Division, Department of the Army, and addressed to officials of the Commission.

None of the essential information above outlined and required by Rules 240.2(c) and 240.4(b)(2) is given. No attempt is made to meet the test relating to "immediate and urgent need". Indeed, it is not even claimed there is an immediate and urgent need which cannot be met by existing carrier service. Rather, the vague and indefinite support of every conceivable commodity moving between unspecified points between broad areas is based merely upon the desirability to the Army to continue to make substantial use of enjoined unlawful operations. There is no suggestion whatsoever that the existing rail, T.O.F.C., and motor carrier transport system is incapable of meeting the shippers' transportation requirements.

The lack of specificity of the so-called support makes a grant a legal impossibility. As a practical matter, it also makes it impossible for these Protestants to show specifically the services they render, for there are literally hundreds of thousands of combinations of origins, destinations and commodities moving between the considered territories. Suffice it here to say that, collectively, they serve all ammunition depots and all other points of consequence in the areas applied for, and render either single- or joint-line service between all such points within them. Further, on some regular movements, they handle explosives by T.O.F.C. in specialized trailers dedicated to those regular movements. In some instances those trailers are interlined in rail-motor movements. These Protestants can and will provide all of the service required.

By no stretch of the imagination can it here be held that the statutory requirement that temporary authority may be granted only where there is an urgent and immediate need for service which cannot be performed by existing carrier service has been met.

Further, the issue of fitness is squarely presented.

Applicant is the subject of two injunctions recently issued by the District Court for the Western District of

Oklahoma. Moreover, its operations and practices are at issue in the Commission's Docket No. MC-C-5835. These Protestants urge that in these circumstances applicant cannot at this time be found fit.

In any event, the application presents nothing more than an attempt to circumvent the rulings of a federal court upon purported support which fails in numerous respects to satisfy the pertinent statutes, decisions and rules.

The application should be denied in its entirety.

Respectfully submitted,

ED WHITE
Ed White

280 Union Station Building
Chicago, Illinois 60606
312/726-6900

Attorney for Western Railroads

Address Reply To:
P.O. Drawer 9897
El Paso, Texas 79989

June 19, 1968

Mr. C. L. Phillips
District Supervisor
Interstate Commerce Commission
Bureau of Operations
Room 350, American General Building
210 Northwest Sixth
Oklahoma City, Oklahoma 73102

Re: Docket MC-129908 (Sub TA) Applicant—American Farm Lines

Dear Mr. Phillips:

We wish to protest the above referenced 180 day temporary authority application in which applicant seeks to transport, over irregular routes, general commodities, including Classes A and B explosives, restricted to traffic moving

on Government Bills of Lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisana, Texas, Oklahoma, and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah, and Arizona. In support of our position, we state as follows:

Whitfield Transportation, Inc., is a for-hire common carrier of general commodities, with the usual exceptions, operating generally between Arizona, New Mexico, Texas and Utah, by virtue of Certificate MC-108461 and Subs as issued by the Interstate Commerce Commission. The attached map sets out our general area of operation, showing our principal gateways, routes and terminals maintained. In performing its service under its certificates, protestant utilizes a fleet of modern equipment, consisting of 39 road tractors, 127 over-the-road trailers, and 101 pieces of pickup and delivery equipment.

We have eleven full-time salesmen, including an off-line salesman in the Pacific Northwest, all of whom vigorously and actively solicit the traffic involved in subject application. A very substantial portion of our revenue is derived from traffic moving on Government Bills of Lading between the Government installations located in the Ogden, Utah area and those in the Southern, Southeastern and Southwestern areas, both in direct and interline services. Our interest is limited to general commodities, however, and any appreciable diversion of this government traffic would necessarily result in a curtailment of the present level of service to the general public, as well as the Government installations. Protestant, in its Sub No. 28 Certificate, is restricted to Government Bill of Lading traffic only from and to the installations in the Ogden, Utah area.

All of this magnifies the extreme importance this Government Bill of Lading traffic has to protestant's overall economic picture as well as its ability to continue to fulfill their obligations to the public. Protestant can serve

quite a few of the involved installations direct and, with a few exceptions, the others can be served by one interline beyond our gateways. We have worked closely with all Government Installations to meet their transportation needs, rate matters as well as service. No service complaints have been received on our transportation performance from any of the installations we serve.

We are but one of the smaller carriers who depend on Government Bill of Lading traffic and there are carriers too numerous to name here, regular or irregular route, specialized, general commodity, etc., all of whom vigorously solicit this involved traffic, as does this protestant, throughout the scope of this application. They, as we do, stand ready, willing and able to perform every aspect of service sought in this application, and to the satisfaction of the supporting shipper. From our past several experiences in attempting to secure government support for a *needed* service, it is very difficult to understand how this Governmental Department can give their actual support when there exists an overwhelming abundance of all types of common carriers available to meet their every need.

Under the circumstances, there is no possible way for this supporting shipper to establish that an urgent and immediate need exists. as required by your Commission. The rules and instructions under Section 210a(a) of the Act are explicit and state, in effect, that your Commission is empowered to grant temporary authority only in cases where there is a need for the service and *there are no carriers, rail or motor,* capable of rendering the service. It is submitted there are ample carriers, both rail and motor, not only capable but are willing and able to perform the service sought. We respectfully urge subject application be denied in its entirety.

Respectfully,

Whitfield Transportation, Inc.
J. P. Rose
Vice President-Traffic

BEFORE THE
INTERSTATE COMMERCE COMMISSION

In The Matter of:

AMERICAN FARM LINES, APPLICATION-
GENERAL COMMODITIES, INCLUDING CLASSES
A AND B EXPLOSIVES

Docket No. MC 129908 TA

Protest of Yellow Transit Freight Lines, Inc., Watson-Wilson Transportation System, Inc.

To The Temporary Authorities Board:

Come now Yellow Transit Freight Lines, Inc. (Yellow Transit) and Watson-Wilson Transportation System, Inc. (Watson-Wilson) and file this protest to the application of American Farm Lines for temporary authority for 180 days to operate as a common carrier by motor vehicle over irregular routes transporting: General commodities, including Classes A and B explosives, restricted to traffic moving on Government bills of lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas on the one hand, and, on the other, points in Washington, California, Nevada, Utah and Arizona.

Yellow Transit is a common carrier by motor vehicle authorized by the Commission under Certificate No. MC 112713 and subs thereunder to transport general commodities, with the usual exceptions, over regular routes in the states of Tex., Okla., Kans., Mo., Ind., Ill., Mich., Ohio and Ky. It has authority to transport Classes A and B explosives over regular routes in the states of Tex., Okla., Kans. and Mo.

Watson-Wilson is a common carrier by motor vehicle authorized by the Commission under Certificate No. MC 70451 and subs to transport general commodities, with the usual exceptions, in interstate commerce in the states

of Calif., Ariz., Colo., N. Mex., Kans., Neb., Iowa, Mo., Minn., Ill., Tenn., Ga and S. C. It has authority to transport Classes A and B explosives in Calif., Ariz., N. Mex., Colo., Kans., Neb., Minn., Iowa, Mo. and Ill. It is presently being operated by Yellow Transit pursuant to authority granted in Docket No. MC-F-9030. The two carriers perform through service in through trailers between the territories in which each operates.

Watson-Wilson operates what it calls its Defense Transport Division, which concentrates in the transportation of explosives under U.S. Government bills of lading. This Division operates 61 long-term leased tractors and 175 over-the-road trailers. These vehicles, whenever necessary, are leased to Yellow Transit for the purpose of serving Government installations in Yellow Transit's authority. Thus these two protestant carriers, being under common control as stated, coordinate the operation of the Watson-Wilson Defense Transport Division vehicles between their two territories. In their general commodities operations, these protestants together utilize more than 800 over-the-road tractors and 1,800 over-the-road trailers. These vehicles are not being operated to full capacity and solicitation constantly is being made to increase the volume of traffic available to them.

Watson-Wilson serves numerous points in California and Arizona. In the transportation of explosives, it constantly interchanges equipment with other authorized carriers for transportation to points in Washington, Nevada and Utah.

These protestant carriers are presently serving the Department of the Army, both in the transportation of general commodities and in the transportation of Classes A and B explosives. They and the other carriers so serving, at the present time, in fact are filling the needs of the Department of the Army. There is no need for an additional carrier to be authorized to operate as sought

to be done by this application. The inevitable result would be the diversion of the traffic, or a significant part of it, from the carriers already serving in the field. There should be no grant of authority, temporary or otherwise, without a full opportunity for interested parties to present evidence at a formal hearing. There has been no demonstration by the applicant that there is an immediate and urgent need to a point or points within a territory having no carrier service capable of meeting such need. Therefore, there are no criteria present for the grant of temporary authority under Section 210(a) of the Interstate Commerce Act (U.S. Code, Title 49, Section 310 a).

WHEREFORE, Yellow Transit and Watson-Wilson respectfully request the Commission to deny this application.

Respectfully submitted,

JOHN M. RECORDS
John M. Records, Attorney for Protestants

Yellow Transit Freight Lines, Inc.
and Watson-Wilson Transportation System, Inc.

P.O. Box 8462 92nd at State Line
Kansas City, Missouri 64114

Dated: June 20, 1968
Due: June 23, 1968

P.O. Box 14048
Houston, Tex. 77021

June 6. 1968

Mr. C. L. Phillips
District Supervisor
Interstate Commerce Commission
Bureau of Operations
Room 350, American General Building
210 Northwest Sixth
Oklahoma City, Oklahoma 73102

Re: Application of: American Farm Lines Docket No. MC 129908 TA Published in Federal Register, Volume 33, Number 104, Page 7796, Dated May 28, 1968

Dear Mr. Phillips:

Comes now Younger Brothers, Inc., hereinafter referred to as protestant, and does hereby protest the granting of the authority sought by American Farm Lines, and as cause for this protest, does hereby respectfully show:

I.

Applicant American Farm Lines is asking your Commission to grant radial authority on General Commodities between several states on the one hand, and on the other, points in Washington, California, Nevada, and Arizona. The only restriction is that it be restricted to traffic moving on Government Bills of Lading.

II.

The authority sought by applicant in this application is extremely broad, commodity wise, and if the applicant is actually seeking this transportation in bulk, in tank vehicles, it conflicts with considerable authority presently held by protestant Younger.

Attached hereto and identified as Exhibit "A", and listed by Sub numbers, is a portion of the authority held by protestant Younger that will be duplicated on the granting of the instant application.

The restriction, "restricted to traffic moving on Government Bills of Lading", restricts the authority sought only to a shipper or consignee, and does not place any restrictions on the broad commodity description.

III.

Protestant Younger has, in the past, handled shipments between the territorial states involved in this application, moving on Government Bills of Lading. To the best of protestant's knowledge, service has been satisfactory as we have not received any complaints from the shipper, the U.S. Government, or contractors for the Government.

IV.

This traffic is certainly attractive to your protestant, and is the type traffic that we strongly solicit and feel quite capable of performing satisfactory to shipper and consignees' requirements. The revenue derived on this traffic is of great importance and is necessary to protestant to continue to offer the shipping public reasonable, safe, and efficient transportation.

Considering the authority held by protestant Younger, we hereby respectfully request that the application of American Farm Lines be denied, in its entirety.

Respectfully submitted,

Younger Brothers, Inc.

By: .....

Wray E. Hughes, Vice President, Traffic

Assistant Secretary of Defense
Washington, D. C. 20301

June 1968

Installations and Logistics
TS

Mr. J. David Brothers
President, American Trucking
Associations, Inc.
1616 P Street, N.W.
Washington, D.C. 20036

Dear Mr. Brothers:

This has reference to your recent letter to the Secretary of Defense asking that Department of Defense support of the application of American Farm Lines, Inc., for temporary Interstate Commerce Commission operating authority be withdrawn.

Your request is, among other things, based on the view that action in supporting the above mentioned application is a complete reversal of existing Department of Defense policy. I wish to assure you that such is not the case.

It has been the policy of this Department, in fact we are required, to obtain the commercial transportation services we need at the lowest sound cost with due consideration being given to service factors. Also a basic objective of long standing is the reduction of costs associated with the distribution of military supplies and equipment to the maximum feasible extent. Thus, we obviously have had a continuing interest in the shortening of the logistics pipeline with its attendant reduction in inventory levels.

Our indicated support of American Farm Lines' application for temporary authority is wholly consistent with our policy and with the objective stated above. Consequently, to withdraw this support would not be in keeping with the obligations this Department has to operate efficiently

and economically and to improve its logistics operations wherever possible.

American Farm Lines has provided a service for the movement of our traffic which has been excellent in every respect and has also resulted in significantly reduced rates. We desire that the type and quality of service which American Farm Lines has provided to the Department be continued. In fact, we would like to see it expanded wherever it may be feasible to do so.

Under the circumstances that exist now it seems to us that our interest in assuring the continued availability of such service can best be reflected by our support of American Farm Lines' application for temporary authority. We are sure that you would also agree that the rules of practice of the Interstate Commerce Commission require in the case of intervention in any of its proceedings, that the intervenor set forth his position in support of or in objection to the matter being considered. With this being the case and with our desire to have continued access to the type and quality service provided by American Farm Lines, it only follows that the DoD would have to indicate support for American Farm Lines' application.

With regard to the reference made in your letter to a communication from the Military Traffic Management and Terminal Service (MTMTS) in which it was stated that the DoD "is not in a position to state that there would be insufficient or inadequate service without American Farm Lines", we would point out that military logistics operations have to be carried on within the capabilities of resources and services available at any given time. Thus, our operations today are structured within the parameters of today's capabilities. To be satified, however, with today's capabilities and not to seek improvements in transportation services would, in our judgment, be turning our backs on progress, and not in keeping with our responsibilities to the Armed Forces and to the taxpayer.

In summary, we do not consider that support of American Farm Lines' application for temporary authority is a reversal of DoD policy, but rather that it is entirely consistent with previously announced policy and objectives of the Department. Further, we do not feel that our support of the American Farm Lines' application is an indication of preference for a particular carrier. On the other hand, we consider it as an expression of the desire of the Department of Defense to have available to it the type and quality of service which American Farm Lines has provided regardless of the carrier(s) which might provide same.

We trust that the foregoing will be helpful to your understanding of our actions in the American Farm Lines case. We would also like to assure you that this action is in no way an expression of dissatisfaction with any carrier members of your association. We are appreciative of and look forward hopefully to the same high level of support of our operations that we have received from them in the past.

Sincerely,

(Signed Thomas D. Morris)
THOMAS D. MORRIS
Assistant Secretary of Defense
(Installations and Logistics)

Order

Service Date July 15, 1968

TA-DEN.-1

At a Session of the Interstate Commerce Commission, Temporary Authorities Board, held at its office in Washington, D.C., on the 12th day of July, A.D. 1968.

No. MC 129908 TA
American Farm Lines
Oklahoma City, Oklahoma

Re: Request to transport general commodities, including Classes A and B explosives, moving on GBL, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah and Arizona.

Application by the above-named applicant filed under Section 210a(a) of the Interstate Commerce Act, as amended, for temporary authority to operate as a motor carrier, in interstate or foreign commerce, being under consideration, and

It appearing, That the said applicant has not established that there exists an immediate and urgent need for any of the service proposed;

It is ordered, That the said application be, and it is hereby, denied.

By the Commission, Temporary Authorities Board.

H. Neil Garson,
Secretary.

(Seal)

Notice to Parties: Special Rules of Practice Governing Procedure of the Temporary Authorities Board provide that petitions for reconsideration of the action of the said Board may be filed within 20 days following service of notice of such action. The Commission requires that the original and six copies of each such petition shall be filed and also a statement certifying that one copy has been served on each party of record in the proceeding.

Order

Service Date

September 5, 1968 TA-GR-1-1

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, acting as an Appellate Division, held at its office in Washington, D. C., on the 3rd day of September, A. D. 1968.

No. MC 129908 TA

AMERICAN FARM LINES
OKLAHOMA CITY, OKLAHOMA

The above-entitled application under Section 210a(a) of the Interstate Commerce Act, and applicant's petition for reconsideration of the order of the Commission, Temporary Authorities Board, entered herein on July 12, 1968, and reply or replies thereto being under consideration and good cause therefor appearing:

It is ordered, That said order of the Commission, Temporary Authorities Board be, and it is hereby, vacated and set aside.

And it appearing, That there is an immediate and urgent need for the motor carrier service described in the appendix hereto, and that there is no carrier service available capable of meeting such need;

It is further ordered, That applicant be, and is hereby, granted temporary authority, conditioned upon full compliance with all applicable statutory and Commission requirements concerning tariff publications, evidence of security for the protection of the public, and designation of agents upon whom process may be served, to engage in the business of transportation by motor vehicle, in interstate or foreign commerce, to the extent and in the manner set forth in the appendix hereto, subject to the further conditions that unless otherwise provided in the appendix (1)

the service herein authorized shall be limited to the movement of traffic which originates at and is destined to the points and areas specified in the appendix, and (2) no operating right separately described in the appendix may be combined with any other operating right therein described or with any other temporary or permanent authority now held by, or hereafter issued to, applicant or any other carrier.

It is further ordered, That the service authorized by this order shall not be commenced unless and until all the above-specified requirements have been met and applicant has received notice from the Commission that compliance has been effected and service may be instituted.

It is further ordered, That upon the authority herein granted becoming effective, failure of applicant to render reasonably continuous and adequate service to the public pursuant thereto and to maintain compliance with statutory and Commission requirements shall constitute sufficient grounds for suspension, change, or revocation of the said authority.

It is further ordered, That if applicant fails to comply with all applicable statutory and Commission requirements, rules and regulations within 30 days from the date hereof, or such additional time as the Commission may specifically grant, this order shall be of no further force and effect and the said application shall be deemed to be denied for want of prosecution and applicant so notified.

And it is further ordered, That, except as herein granted, the said application be, and it is hereby, denied.

By the Commission, Division 1, acting as an appellate division.

H. Neil Garson,
Secretary.

(Seal)

TA-GR-1

APPENDIX

No. MC 129908 TA

AMERICAN FARM LINES
OKLAHOMA CITY, OKLAHOMA

By the order of which this appendix is a part, entered under the name and number shown above, applicant upon compliance with the conditions set forth therein and after receipt of notice from the Commission that the said conditions have been met, and provided the operations are begun within the time allowed in said order or any extension thereof, is authorized to engage in the business of transportation by motor vehicle, in interstate or foreign commerce as follows:

Time for which authority is granted—90 days

Type of carrier—Common

Service authorized—

General commodities, including Classes A and B explosives, moving on Government bill of lading, over irregular routes,

Between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washinton, California, Nevada, Utah and Arizona.

SAFETY CONDITION: This grant of authority is conditioned upon applicant's maintenance of a satisfactory degree of compliance with the Federal Highway Administration's (Department of Transportation) Motor Carrier Safety Regulations. In the event of non-compliance with these regulations, that Administration may submit a recommendation for revocation of the authority.

Order

Service Date
September 12, 1968

INTERSTATE COMMERCE COMMISSION

No. MC 129908 TA

AMERICAN FARM LINES
OKLAHOMA CITY, OKLAHOMA

In the Matter of Request for Postponement of Effective Date:

PRESENT: Rupert L. Murphy
Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, and of request Navajo Freight Lines, Inc., protestant, filed September 9, 1968, for stay of effective date of the order of the Commission, Division 1, acting as an Appellate Division, dated September 3, 1968, which granted temporary authority; and good cause appearing therefor:

It is ordered, That the said request for stay, be, and it is hereby, denied, for the reason that no sufficient cause appears for granting the relief sought, but without prejudice to protestant's petition for reconsideration.

Dated at Washington, D. C., this 11th day of September, 1968.

By the Commission, Commissioner Murphy.

H. NEIL GARSON
H. Neil Garson,
Secretary.

(SEAL)

Order

Service Date
September 13, 1968

INTERSTATE COMMERCE COMMISSION

No. MC 129908 TA

AMERICAN FARM LINES
OKLAHOMA CITY, OKLAHOMA

In the Matter of Request for Postponement of Effective Date and for Finding of General Transporation Importance:

PRESENT: Rupert L. Murphy
Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, and of petition of American Trucking Associations, Inc., protestant, filed September 11, 1968, for a finding of General Transportation Importance and stay of effective date of the order of the Commission, Division 1, acting as an Appellate Division, dated September 3, 1968, which granted temporary authority; and good cause appearing therefor:

It appearing, That this proceeding does not fall within the category as provided by Rule 1.101(a)(4) of the Commission's General Rules of Practice for a finding of General Transportation Importance.

It is ordered, That the requests for stay and for a finding of General Transportation Importance, be, and they are hereby, denied, for the reason that no sufficient cause appears for granting the relief sought, but without prejudice to protestant's petition for reconsideration.

Dated at Washington, D. C., this 12th day of September, 1968.

By the Commission, Commissioner Murphy.

H. NEIL GARSON,
Secretary.

(SEAL)

Order

Service Date
September 17, 1968

INTERSTATE COMMERCE COMMISSION

No. MC 129908 TA

AMERICAN FARM LINES
OKLAHOMA CITY, OKLAHOMA

In the Matter of Request for Postponement of Effective Date:

PRESENT: Rupert L. Murphy
Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, and of petition of Munitions Carriers Conference, Inc., protestant, filed September 12, 1968, for stay of effective date of the order of the Commission, Division 1, acting as an Appellate Division, dated September 3, 1968, which granted temporary authority; and good cause appearing therefor:

It is ordered, That the said request for stay, be, and it is hereby, denied, for the reason that no sufficient cause appears for granting the relief sought, but without prejudice to protestant's petition for reconsideration.

Dated at Washington, D. C., this 16th day of September, 1968.

By the Commission, Commissioner Murphy.

H. NEIL GARSON,
H. Neil Garson,
Secretary.

(SEAL)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

Civil Action No. 3828

BLACK BALL FREIGHT SERVICE; CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE; D-C INTERNATIONAL, INC.; GARRETT FREIGHTLINES, INC., NAVAJO FREIGHTLINES, INC.; PACIFIC INTERMOUNTAIN EXPRESS CO.; WESTERN GILLETTE, INC.; RISS & COMPANY, INC.; IML FREIGHT, INC.; and AMERICAN TRUCKING ASSOCIATIONS, INC. *Plaintiffs.*

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants.*

Complaint To Set Aside and Annul an Order of the Interstate Commerce Commission

Plaintiffs respectfully petition this Honorable Court for a decree setting aside and annulling that certain order of the Interstate Commerce Commission, hereinafter referred to as the Commission, made and entered in the Commission's Order entitled, "Docket MC-129908TA American Farm Lines, Oklahoma City, Oklahoma on September 3, 1968, served on September 5, 1968, and for cause of complaint against the defendants allege:

I.

That Black Ball Freight Service is a corporation organized and existing under the laws of the State of Washington with their principal office and place of business at Seattle, Washington; that Consolidated Freightways Corporation of Delaware is a corporation organized and existing under the laws of the State of Delaware with their principal office and place of bussiness at Menlo Park, California; that D-C International, Inc. is a corporation

organized and existing under the laws of the State of Nebraska with their principal office and place of business at Denver, Colorado; that Garrett Freightlines, Inc., is a corporation organized and existing under the laws of the State of Idaho with its principal office and place of business at Pocatello, Idaho; that Pacific Intermountain Express Co. is a corporation organized and existing under the laws of the State of Nevada with its principal office and place of business at Oakland, California; that Navajo Freight Lines, Inc. is a corporation organized and existing under the laws of the State of New Mexico with its principal office and place of business at Denver; Colorado; that Western Gillette, Inc., is a corporation organized and existing under the laws of the State of California with its principal office and place of business at Vernon, California; that Riss & Company, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business at Kansas City, Missouri; that IML Freight, Inc. is a corporation organized and existing under the laws of the State of Utah with its principal office and place of business at Salt Lake City, Utah; and that American Trucking Associations, Inc., is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business at Washington D. C.

II

The Interstate Commerce Commission is an agency of the United States established by law and vested with authority over the operations of the plaintiffs pursuant to the provisions of the Interstate Commerce Act, as amended (Title 49 U.S.C.A., Section 301, et seq.)

III

This complaint is filed pursuant to Section 17(9) of the Interstate Commerce Act, as amended (Title 49 U.S. C.A., Section 17(9)), and 49 U.S.C.A. 305(g) and pur-

suant to Title 28, U.S.C.A., Sections 1336, 1398, 2284, 2321 and 2325, inclusive and Title 5 U.S.C.A. Sections 701-706. Plaintiffs invoke the jurisdiction of this Honorable Court under the provisions of said Sections and also under the provisions of Title 5, U.S.C.A., Sections 701-706.

IV

Venue lies in this judicial district under Section 1398 of Title 28, United States Code, because the principal office of Black Ball Freight Service is in this district.

V

The provisions of Section 2322 of Title 28 of the United States Code requires that actions to suspend, enjoin, annul, and set aside any order of the Interstate Commerce Commission shall be brought against the United States. By the provisions of Section 2323, the Interstate Commerce Commission may intervene as of right in any such action and it has been the Commission's practice invariably to do so. To obviate the filing of needless pleadings in this cause, plaintiffs bring this action against both the United States and the Interstate Commerce Commission.

VI

That the controversy tendered by this Complaint arises out of the issuance by the Interstate Commerce Commission of the order identified above, and set forth in Exhibit A, hereto attached, and by this reference made a part hereof. Said order was supported by a single letter written by a representative of the Department of the Army, a copy of which is hereto attached as Appendix B, and by this reference made a part hereof.

VII

That the Interstate Commerce Commission pursuant to authority conferred upon it by the Congress by the pro-

visions of Section 204(a)(6), 210a(a), 217, and 218 of the Interstate Commerce Act (respectively 49 U.S.C. Sections 304(a)(6), 310(a)(a), 317 and 318) and Sections 4 and 9(b) of the Administrative Procedure Act (respectively 5 U.S.C. 1003 and 1008(b)), instituted a proceeding "for the purpose of determining whether certain proposed rules or any other rules, should be prescribed to govern the filing, processing and determination of applications by motor common and contract carriers for temporary authority." That to said proceeding the Commission assigned the docket and title of *"Ex Parte No. MC67, Motor Carrier Temporary Authorities"*. That on April 7, 1965, the Commission formally enunicated its decision in said proceeding, as reported in 98 M.C.C. 483 et seq. That in said decision, as here pertinent, it was mandatorily required at page 486 of the report:

> "(c) *Supporting statements.*—Each application for Temporary Authority must be accompanied by a supporting statement (s) designed to establish an immediate and urgent need for service which cannot be met by existing carriers, except that when the Department of Defense is the shipper such support may be furnished directly to the Temporary Authorities Board by the Washington office of that Department. Each such shipper's statement, except those submitted by the Department of Defense, must contain a certification of its accuracy and must be signed by the person (or an authorized representative thereof) having such immediate and urgent need for motor carrier service. Any such supporting statement must contain at least the following information:
>
> (1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved).
>
> (2) Points or areas to, from, or between which such commodities or passengers are to be transported. (If

service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested.)

(3) Volume of traffic involved, frequency of movement, and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue, and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.

(10) Name and address of motor carrier who will provide service and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's name, address, and motor carrier docket number, if known, and state whether such application was granted or denied and the date of such action, if known."

It was further provided at page 490:

"(b) *Standards for determination.*—The following standards shall be used by the Temporary Authorities Board, and by Division 1 of the Commission acting initially or in an appellate capacity, in the absence of special or unusual circumstances, in the determination under section 210a(a) of the Interstate Commerce Act (49 U.S.C. 310a(a)) of applications for temporary authority.

(1) *General.*—Grants of temporary authority shall only be made upon the establishment of an immediate and urgent need for the transportation of passengers, or of particular commodities or classes of commodities, from specified origin points or areas to specified destination points or areas, having no carrier service capable of meeting such needs. Requests for temporary authority involving service to or from entire states, counties, or other defined areas will warrant approval only when supported by evidence that there is a compelling need for service to or from a representative number of points in each such state, county, or area, that there is a reasonable certainty that such service will be utilized, and that there is no carrier service available capable of meeting such need. Otherwise, such grants will be limited in accordance with the evidence to point-to-point authorization covering the immediate and urgent need for service."

It was further provided at page 491:

"(2) *Immediate and urgent need.*—An immediate and urgent need justifying a grant of temporary authority will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service. Such a showing may involve a new or relocated plant, different method of

distribution, new or unusual commodities, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to provide service, or comparable situations which require new motor carrier service before an application for permanent authority can be filed and processed."

VIII

That as to the order, which is the subject of this Complaint, the Commission failed to comply, and to require the respective applicant to comply, with its formally promulgated rules set forth in paragraph VII, supra, and in particular with the requirement that there was no existing carrier service to meet the need. All evidence was to the contrary as shown by Exhibit C, attached hereto, and by this reference made a part hereof.

IX

That each of the plaintiffs made appearances in the Temporary Authority Proceeding.

X

That the order herein complained of, and as is set forth in Exhibit A, is administratively final, and plaintiffs have exhausted all of their remedies before the Interstate Commerce Commission.

XI

Plaintiffs allege that in making and entering said order, the Interstate Commerce Commission exceeded its statutory and constitutional powers, and committed errors of law, in the following particulars:

(1) In that the Commission issued temporary authority to American Farm Lines without complying with the mandatory standards promulgated in its

Docket Ex Parte 67, that is, without establishment "of an immediate and urgent need for the transportation of * * * particular commodities or classes of commodities, from specified origin points or areas to specified destination points or areas, having no carrier service capable of meeting such needs."

(2) In that the Commission issued temporary authority to American Farm Lines without complying with the mandatory standards promulgated in its Docket Ex Parte 67, that is, without requiring establishment as to "service to or from entire States, counties or other defined areas" * * * "that there is a compelling need for service to or from a representative number of points in each such State, County, or area", and "that there is a reasonable certainty that such service will be utilized, and that there is no carrier service available capable of meeting such need."

(3) In that the Commission issued temporary authority to American Farm Lines without requiring compliance with the mandatory requirements promulgated in its Docket Ex Parte 67, that is, by complying with the requirements specified on pages 6 and 7 thereof.

(4) In that the Commission failed, despite its duty under the National Transportation Policy "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation."

WHEREFORE, plaintiffs respectfully pray:

1. That upon the filing of this Complaint, the District Judge to whom it is presented shall notify the Chief Judge of the Circuit Court, who shall designate two other judges, at least one of whom shall be a Circuit Judge, to serve together with said District Judge as members of the Court to hear and determine this proceeding;

2. That process in due form issue out and under the Seal of this Honorable Court, directed to the defendants as required by law and that due and proper service of such process be made upon said defendants, and that thereafter, defendants be required on or before a date specified in such process or summons issued by this Court to appear herein and to answer this Complaint;

3. That after final hearing, this Court adjudge, order and decree that said Order of the Interstate Commerce Commission, as is identified in Exhibit A, is, and at all times has been, beyond the lawful authority of the Interstate Commerce Commission, and is wholly unlawful and void, and that said order be perpetually set aside, cancelled and annulled;

4. That the plaintiffs have such other and further relief in the premises as the Court may deem just and equitable.

EISENHOWER, CARLSON,
NEWLANDS, REHA &
SINNITT
JAMES F. HENRIOT
Puget Sound Bank Building
Tacoma, Washington 98402

WILLIAM B. ADAMS
William B. Adams
624 Pacific Building
Portland, Oregon 97204

KING, MILLER, ANDERSON,
NASH & YERKE
CLIFFORD N. CARLSEN, JR.
Clifford N. Carlsen, Jr.
American Bank Building
Portland, Oregon 97205

STATE OF WASHINGTON
COUNTY OF KING } ss.

I, Lois Acheson, being first duly sworn, depose and state: That I am President of Black Ball Freight Service, a Washington corporation, one of the plaintiffs herein, that I have read the foregoing Complaint, know the contents thereof, and that the facts alleged therein are true and correct except as to the facts, if any, alleged to be upon information and belief, and that as to those I believe them to be true.

LOIS ACHESON
Lois Acheson

Subscribed and sworn to before me this 26th day of September, 1968.

Signature illegible
Notary Public for Washington

My Commission expires: 10/6/69

Appendix A is printed at page 143a-144a.

Appendix B is printed at page 14a-15a.

Appendix C is printed at page 11a-12a.

[1] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

No. 3828

BLACK BALL FREIGHT SERVICE CONSOLIDATED FREIGHTWAYS CORPORATION, ET AL., *Plaintiffs*,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants*.

TRANSCRIPT OF PROCEEDINGS held in the above-entitled and numbered cause in the above-entitled court on Wednesday, October 2, 1968, before the Honorable GEORGE H. BOLDT, United States District Judge, at the United States Courthouse, Tacoma, Washington.

APPEARANCES

On behalf of the plaintiffs:

Mr. William B. Adams,
Adams, McLaughlin & Simpson,
Attorneys at law,
624 Pacific Building
Portland, Oregon, 97204

On behalf of the defendants:

Mr. Charles W. Billinghurst,
Assistant U. S. Attorney,
Federal Building,
Tacoma, Washington.

[2] PROCEEDINGS

Mr. Quinn: May it please the Court, I am Eugene Quinn of Eisenhower, Carlson, Newlands, Reha and Sinnitt. I represent the plaintiff here, but arguing this case for the plaintiff if William B. Adams of Adams, McLaughlin, & Simpson. I understand, Your Honor, he has been a member of this court since 1934.

The Court: It is a pleasure to have you aboard, Mr. Adams. I seem to have seen you quite recently.

You may proceed.

Mr. Adams: May it please the Court, just a brief history of the proceedings. This proceedings involves a temporary authority issued by the Commission of American Farm Lines. The background—in other words, they were the ones that were issued the temporary authority and background of the temporary authority is that American Farm Lines had been hauling explosives, but the carriers had—the other carriers in the State of Oklahoma went in and secured an injunction. The application for the injunction was supported by the Interstate Commerce Commission.

The Court found that American Farm Lines was operating without authority, whereupon, American Farm Lines filed an application with the Interstate Commerce Commission to secure temporary authority to haul not only [3] explosives but general commodities between various states.

The Court: This is closely parallel to the pending case, isn't it?

Mr. Adams: Yes, Your Honor.

We are alleging here the same thing that we did in the Acme Case, that there was no compliance with the Commission's regulation called Ex Parte MC-67.

Attached to the complaint is Exhibit B and C, which are letters of support, and you will recall that in the other case we had quite a big record.

The Court: I recall it very well. I read it from one end to the other.

• • • • • • • • • • •

[5] * * * My argument would be exactly as in the Acme case. In other words, on this principle, that the sole issue here is whether or not the Commission itself and the applicant, American Farm Lines, complied with the mandatory provisions of Ex Parte MC-67. I would cite the same cases throughout, and if you want me to do that—

The Court: Oh, no, I have read every one of those just in the last few days, very, very thoroughly.

Mr. Adams: Very well.

The Court: If you would like to talk about them, you may, but I have read them.

Mr. Adams: I don't want to just go over what I have there.

The Court: It won't be necessary. I have given them very close scrutiny in the last few days.

* * * * * * * * * * *

[22] The Court: Let me ask you this, I just dislike to interrupt your train of thought but I notice in reading this order, the one granting the temporary authority, the same one we have been talking about says in it, "And it appearing there is immediate and urgent need for the motor carrier service described herein and that there is no carrier service available capable of meeting such needs." That is what is recited. But so far as I can see, the only basis for any determination of whether or not there are other services available are these two letters, in the one instance signed by Mr. Wagner, Chief of the Law Division, and on the second one also Mr. Wagner [23] again. Now, Wagner in his letter says that the department is not in a position to state that it would be insufficient or inadequate without American Farm Lines.

Mr. Billinghurst: That is the letter dated April 30, 1968?

The Court: It is the same gentleman that signed the other letter in May, and neither one of the letters pretends to assert that there is not available service. In other

words, one of the recitals of the order is totally unsupported as far as the record before me is concerned.

Mr. Billinghurst: In the first place, Your Honor, the letter of April 30 is not a part of the application upon which the order was based.

The Court: Did it have any supporting data in it?

Mr. Billinghurst: The support for the order is the letter of May 15.

The Court: Where in there is there anything concerning otherwise available service? I just read it, I couldn't see anything in there about that.

Mr. Billinghurst: The third unnumbered paragraph contains a reference, and I don't have the entire file on this matter, but it contains a reference which I am told relates to the particular need for this particular service. The second sentence in the third unnumbered paragraph, [24] "Certain services of this company have afforded the Department of Defense a meaningful measure under practical conditions of character capability in general."

The Court: It is quite clear, I have read that, of course, but that has nothing to do with whether or not these plaintiff carriers or somebody else aren't available and capable of providing the service.

Mr. Billinghurst: The next sentence is significant, "Shorter service is necessary for shortening the pipe line," and they mention shortening a pipe line meaning getting their material from point to point more quickly, improving their logistics position.

The Court: Does that still say anything about any of these other people not being able to shorten the pipe line? These other people could shorten the pipe line couldn't they?

Mr. Billinghurst: I'm told there is a specific problem involved here, this company because of its peculiar organization and position is able to give direct service from points in the mid-west to the west coast without transferring its loads at intermediate points with the result that its serv-

ice is much quicker than that of its competitors. In other words, when this company takes a load, it leaves the warehouse, it delivers the load on the west coast using two drivers going straight through. [25] In the case of the other companies, and this is what the Army is referring to in saying it is shorter service, the load will be transferred from company to company at various points along the line. A company will take it, for example, from Denver to someplace in New Mexico where the load is then stopped until B company picks it up and so on. The saving in time—

The Court: I can understand how desirable and fine that would be, but what does the record show concerning whether or not the existing carriers are not capable of doing that?

Mr. Billinghurst: Only the reference to the shorter service.

The Court: But this other letter by the same man says they are not prepared to make any representation that the existing service wouldn't be insufficient or inadequate. It would seem to me that if he found out between the 30th of April and the 15th of May something about the subject of existing service, he ought to have spelled it out a little more particularly than that, wouldn't you think?

Mr. Billinghurst: I would say yes. However, I can't comment on the portions of the record that aren't here. I don't know.

The Court: I'm not being the least bit critical of you, Mr. Billinghurst, or anybody for that matter. I [26] am just trying to find out what, if any, authority the Court has to deal with this matter because clearly if it is within the discretion of the Commission to issue this, it isn't for me to even think about how they should have exercised or provided that they have some basis for exercising it. But it seems to me that obviously that the order in question recites something that I cannot see is shown or indicated in this record. Now, it may be that we just haven't got enough of the record here or something of the kind. But

this is a critical point, I might say, because I just happen to be sensitive to that point because this is the precise and exact point that we had in the Acme Cartage Case, which has been submitted for decision, and the reason that that is important is that that decision conceivably could have a very important bearing on this very point. In fact, it might be almost determinative of this point. In those circumstances I thought I should call it to your attension so that you could tell me.

Mr. Billinghurst: I do wish to advise the Court as completely as possible.

I make another reference to the second unnumbered paragraph which states, "The Department of Defense is constantly looking for ways to shorten the pipe line of its vital military supplies. This is effected through [27] reduced transit times between points of manufacture and warehouses and warehouses and points of export. A speed up in transit time will bring about a greatly improved logistics effectiveness resulting in reduced cost to the government."

The Court: That is most desirable and most commendable that they are doing that, but wouldn't you think that one of the things they ought to do is contract the existing carriers and see whether they are prepared to do what they desire?

Mr. Billinghurst: I'm sure that has been done, and I think that the fact that it is reflected in the first sentence referring to that particular carrier, its shorter service is necessary.

The Court: But that still doesn't say that these other people couldn't do the same thing if they were given a chance.

Mr. Billinghurst: The inference is—

The Court: But in the 8th and 9th paragraphs of the rules implementing the statute in question, 210 a (a), the one that authorizes the issuance of temporary authority, specifically requires that there shall be supporting statements for these applications and that each one

must at least specify what efforts have been made to procure the desired service urgently and immediately urgently [28] needed service and to specify in particular names, addresses, when, where, and all the rest of it, all of it in great detail. I don't see anything like that in here.

Mr. Billinghurst: The file as it is presented doesn't contain it, Your Honor.

The Court: That is the way it looks to me.

Mr. Billinghurst: Even though it doesn't, however, the peculiar nature of the law relating to the issuance of a temporary restraining order is such that in the absence of any requirement of showing substantial evidence of the immediate urgent need, where there is a showing of such an urgent need—

The Court: Well, I am not concerned about urgent need. There are two factors, the statute says plainly, I can almost quote it word for word because I have been poring over it, but it is plain in the statute that temporary orders may be authorized when, one, there is an immediate and urgent need for service; two, not available within the territory in question, and those are the conditions upon which the ICC has any authority to grant any temporary authority at all, and this is the question posed, of course, in Acme Cartage.

• • • • • • • • • •

[58] The Court: Very well.

Gentlemen, I am persuaded that in the situation now apparent that all of the necessary factors to be considered in granting a temporary stay are sufficiently shown of record, and I think that I should grant a stay and will do so with the proviso that if either an additional showing of some kind, which was not available to be presented at this time should be [59] desired, or some change in circumstances not now existing should arise, anyone who is able to show those conditions may make an application for vacation of the stay order. It will be heard as promptly as possible.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

CIVIL ACTION NO. 3828

BLACK BALL FREIGHT SERVICE; CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE; D-C INTERNATIONAL, INC.; GARRETT FREIGHTLINES, INC.; NAVAJO FREIGHTLINES, INC.; PACIFIC INTERMOUNTAIN EXPRESS CO.; WESTERN GILLETTE, INC.; RISS & COMPANY, INC; IML FREIGHT, INC.; and AMERICAN TRUCKING ASSOCIATIONS, INC., *Plaintiffs,*

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants.*

Order Staying Going Into Effect of Order

This cause having come on for consideration upon the motion of the plaintiffs for an order staying the going into effect of an order of the Interstate Commerce Commission pursuant to the provisions of Title 5 U.S.C., Sections 702, 703 704 and 705, and Title 28, Section 2284(3), pending determination of the issues of this proceeding, or until the further order of the Court, said motion being based on the verified complaint herein and the affidavits of Forrest Arnold, Earl J. Brooks, Edward A. Upp, A. John Warren, W. J. Wilson, David Inwood and others; and the Court, from said complaint, motion and the said affidavits and Testimony of record finds that unless this order is entered plaintiffs will suffer irreparable damage to their services as motor common carriers and to themselves; and the Court being advised in the premises:

IT IS ADJUDGED AND ORDERED that that certain order of the Interstate Commerce Commission issued by it in its Docket MC-129908TA application of American Farm Lines, Oklahoma City, Oklahoma under date of September

3, 1968, be stayed from going into effect or otherwise be inoperative pending a determination by this Court of the issues of this proceeding, or until the further order of the Court.

Dated and done at Tacoma, Washington in said District this 2 day of October, 1968.

GEORGE H. BOLDT
Judge

Order presented by:

JAMES F. HENRIOT
Of counsel for Plaintiffs.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

CIVIL ACTION No. 3828

BLACK BALL FREIGHT SERVICE, INC., ET AL., *Plaintiffs*,

v.

UNITED STATES OF AMERICA and THE INTERSTATE COMMERCE COMMISSION, *Defendants*.

Motion To Stay Further Proceedings Herein

The United States of America and the Interstate Commerce Commission, defendants herein, move the Court to stay further proceedings herein and as grounds therefor state the following:

On October 3, 1968, this Court enjoined the effectiveness and operation of the Interstate Commerce Commission's order of September 3, 1968, in Docket No. MC-129908 TA, which granted to American Farm Lines temporary authority to conduct motor common carrier operations and

transport general commodities, including Class A and B explosives, moving on Government bills of lading between certain specified points.

When this injunction was issued, there were contemporaneously pending before the Commission numerous petitions for reconsideration of the order of September 3, 1968, filed by certain interested parties, including plaintiffs, to which the United States Department of Defense and American Farm Lines have now replied. The Department of Defense's reply has specified additional reasons indicating the existence of an immediate and urgent need for applicant's service which cannot be met by existing carriers. Since this evidence was not a part of the original record and no opportunity for reply was extended to protestants, the Commission issued an order on November 5, 1968, a copy of which is attached, reopening the proceeding for the purpose of receiving this evidence and replies thereto which will be considered in reaching a determination as to whether a grant of authority should be awarded. The Commission's order reopening the proceeding preserves the effectiveness of this Court's restraining order by postponing the effective date and operation of the order dated September 3, 1968, and directs American Farm Lines not to perform any for-hire operations.

Accordingly, we respectfully move that all proceedings in the instant court action, Civil No. 3828, be stayed pending a final determination by the Commission after reopening and further consideration.[1]

---

[1] Upon completion of the administrative proceedings by issuance of an order, it is intended that plaintiffs have the opportunity, if they so desire, to renew their request for relief from the Court.

SERVICE DATE
October 11, 1968

Order

INTERSTATE COMMERCE COMMISSION

No. MC-129908 TA

AMERICAN FARM LINES
(Oklahoma City, Oklahoma)

IN THE MATTER OF POSTPONING THE EFFECTIVE DATE OF ORDER

Present: PAUL J. TIERNEY, Chairman, to whom the above-entitled matter which is the subject of this order is assigned for action thereon.

Upon consideration of the record in the above-entitled proceedings, and the entry of a temporary restraining order on October 3, 1968, by the United States District Court for the Western District of Washington in Civil Action No. 3828, *Black Ball Freight Service, et al.* v. *United States,* wherein the Court stated in part:

> *It is adjudged and ordered* that that certain order of the Interstate Commerce Commission issued by it in its Docket MC-129908 TA application of American Farm Lines, Oklahoma City, Oklahoma under date of September 3, 1968, be stayed from going into effect or otherwise be inoperative pending a determination by this Court of the issues of this proceeding, or until the further order of this Court.

and good cause appearing therefor:

It is ordered, That the effective date and operation of the order heretofore entered September 3, 1968, in No. MC-129908 TA, be, and it is hereby, postponed until further order of the Commission.

It is further ordered, That in view of the Court's order and of the order of the Commission, American Farm Lines

may not now perform any for-hire operations in interstate or foreign commerce pursuant to the Commission's order of September 3, 1968, entered in this proceeding.

Dated at Washington, D. C., this 9th day of October, A.D., 1968.

By the Commission, Chairman Tierney.

(Seal)

H. NEIL GARSON
Secretary

SERVICE DATE
November 5, 1968

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, Acting as an Appellate Division, held at its office in Washington, D. C. on the 5th day of November, 1968.

No. MC-129908 TA

AMERICAN FARM LINES
(Oklahoma City, Okla.)

Upon consideration of the record in the above-entitled proceeding granting to American Farm Lines on September 3, 1968, a 90-day temporary authority to conduct motor common carrier operations and transport general commodities, including Class A and B explosives, moving on a Government bill of lading, over irregular routes, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and, on the other, points in Washington and Arizona; and (1) the entry of a temporary restraining order on October 3, 1968, by the United States District Court for the Western District of Washington in Civil Action No. 3828, *Black Ball Freight Service, et al.* v. *United States,* enjoining the order of September 3, 1968, from going into effect or otherwise becoming operative; and (2) the filing on various dates in September and October 1968, of numerous petitions of protestants for reconsideration of the said order of September 3, 1968; and replies thereto by applicant and the Department of Defense; and

It appearing, That the Department of Defense's reply to said petitions has specified additional reasons indicating an immediate and urgent need for applicant's service which cannot be met by existing carriers;

It further appearing, That the additional evidence referred to in the previous paragraph was not a part of the original record to which protestants have had an opportunity to reply; and good cause appearing therefor:

It is ordered, That the proceeding be, and it is hereby, reopened on the Commission's own motion for the purpose of receiving a verified statement from the Department of Defense which shall, to the extent the national defense and security will permit disclosure, specify the commodities and points between which there is an immediate and urgent need for applicant's proposed service which cannot be met by existing carriers.

It is further ordered, That on or before November 20, 1968, applicant shall submit a verified statement from the Department of Defense, including therein the matter set forth in the preceding ordering paragraph.

It is further ordered, That on or before December 6, 1968, protestants may submit verified statements in response to any statement submitted by applicant;

It is further ordered, That all such verified statements submitted shall be served upon all other parties to the proceeding, and each statement shall so certify.

It is further ordered, That in view of the restraining order issued by the Court on October 3, 1968, the order of the Commission, Chairman Tierney, dated October 9, 1968, postponing the effective date of operation of the order entered September 3, 1968, be, and it is hereby, continued in effect and American Farm Lines be, and it is hereby, directed not to perform any for-hire operations in interstate or foreign commerce pursuant to the Commission's order of September 3, 1968, until further order of the Commission.

It is further ordered, That after expiration of the time period fixed for submission of verified statements the pro-

ceeding shall be reconsidered by us on the record as made together with such verified statements as may be filed.

By the Commission, Division 1, Acting as an Appellate Division.

H. NEIL GARSON
Secretary

(SEAL)

BEFORE THE INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-129908 TA

AMERICAN FARM LINES

Motion To Vacate and Set Aside Commission's Order, Entered November 5, 1968, Reopening Proceeding for Reconsideration on Supplemented Record.

Comes now American Trucking Associations, Inc. (ATA), protestant herein, and files this motion to vacate and set aside Division 1's order, entered herein on November 5, 1968, reopening the proceeding for reconsideration on the record as supplemented by such verified statements as may be filed by the parties.

I

STATEMENT OF THE CASE

The Temporary Authorities Board, by order served July 15, 1968, denied American Farm Lines' application to transport general commodities, including Classes A and B explosives, moving on Government bills of lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah, and Arizona. Applicant filed a petition for reconsideration, and protestants replied thereto. Division 1, acting as an Appellate Division, by order served September 5, 1968, vacated and set aside the Board's order and granted the authority as sought. Numerous protes-

tants filed petitions for reconsideration of Division 1's order, and these petitions are presently pending before the Commission. Additionally, certain protestants, including ATA, filed a complaint in the United States District Court, Western District of Washington, seeking to set aside Division 1's order. By order entered October 2, 1968, the court stayed the effective date of Division 1's order pending a determination by the court of the issues in this proceeding, or until further order of the court. (*Black Ball Freight Service* v. *United States*, Civil No. 3828, W.D. Wash., October 2, 1968.) By order served October 11, 1968, the Commission, Commissioner Tierney, stayed the effective date and operation of Division 1's order until further order of the Commission. On October 16 and 17, 1968, the Department of Defense (DoD) and American Farm Lines, respectively, filed replies to protestants' petitions for reconsideration, and applicant's petition included a petition to reopen the record for the purpose of receiving the reply statement of DoD as evidence of record. ATA, and other protestants replied to that petition. By order served November 5, 1968, the Commission, Division 1, acting as an Appellate Division, reopened the proceeding, on its own motion, for the submission of a verified statement by DoD and such reply statements as may be filed by protestants. The order then provides that after expiration of the time fixed for the submission of such verified statements, the Commission will reconsider the proceeding on the record as made together with such verified statements as may be filed.

II

Division 1's Consideration of DoD's Reply to Protestants' Petitions for Reconsideration as Evidence in This Proceeding Was Improper

At the outset, we must seriously question the propriety of Division 1's action in treating DoD's reply to protestants' petitions for reconsideration as evidence "indicating an immediate and urgent need for applicant's service

which cannot be met by existing carriers." It should be noted that no provision of Part 1131 of the Commission's Temporary Rules[1] nor any provision of the Commission's General Rules of Practice sanctions the introduction of evidence in a reply statement. To the contrary, section 1100.101(b) of the Commission's General Rules sets forth the specific procedures which are to be complied with by a party seeking to introduce additional evidence in a proceeding. It provides:

> When in a *petition* filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and *explanation must be given why such evidence was not previously adduced.* (Emphasis supplied)

DoD's reply does not comply in form or content with the above-stated provisions.

Applicant, in its petition to reopen the record in this proceeding for the receipt of additional evidence, requested that DoD's reply statement be received in evidence. We respectfully submit that if the Commission is to consider the evidentiary value of DoD's reply statement, such action can only be taken, if at all, after consideration of the merits of the probative value of the reply statement as urged in applicant's petition, and in light of protestants' motions and replies thereto, and not by summary action by the Commission upon its own motion.

III

Applicant's Petition To Reopen the Record Fails To Establish the Probative Value of DoD's Reply Statement

The central issue in this proceeding is whether there is an immediate and urgent need for service which cannot be

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[1] The Temporary Authority Rules do not provide for the submission of supporting evidence beyond the initial filing of shipper's statement of support.

met by existing carriers. The Commission has prescribed in detail the information required to establish such a showing. (49 C.F.R. § 1131.2(c)) In our reply,[2] filed November 6, 1968, to applicant's petition to reopen the record, we challenged the evidentiary value of DoD's reply statement. Therefore, we now request that such reply be incorporated as a part of this pleading. Thus, at this time, we will only briefly consider the probative value of DoD's statement.

The sum total of "specific" complaints about existing services raised by DoD in its reply related to three shipments of explosives moving between three origin points and two named destinations. We do not believe that such scant evidence could be considered as "indicative" of an immediate and urgent need for the movement of general commodities, including Classes A and B explosives, radially between points in a 14-State area. Additionally, only two existing carriers were actually named in the entire statement, and DoD readily admitted that one of them, namely Navajo, was providing satisfactory service. It is well established that complaints alleging inadequate service by unidentified carriers do not constitute proof of inadequate service by protestants; and it is equally well settled that the alleged service inadequacy of a carrier on one shipment is not even conclusive as to the overall adequacy of that carrier's service, much less the more than 110 other common carriers protesting this application.

The remainder of DoD's reply concerned itself with statements as to alleged dollar savings[3] resulting from the use of applicant's service, and a preference for single-line service. Such considerations clearly do not warrant a grant of temporary authority.

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[1] Although ATA's reply was timely filed, it is obvious that Division 1's order, entered November 5, 1968, did not consider the merits of that pleading.

[3] The Commission has held on numerous occasions that, unless the rates involved are so high as to constitute a boycott of the traffic, rate considerations will not justify the issuance of operating authority.

We submit that DoD's reply is not probative of any issue material to this proceeding, and we renew our objection to the receipt of such general allegations as evidence in this proceeding.

IV

Division 1, by Reopening This Proceeding for the Purpose of Supplementing the Existing Record Upon Its Own Motion, Has Shown Undue Preference for Applicant

It has been held that the Commission has continuing jurisdiction over its orders, and that an appellate divison may reconsider its own actions, at least until such time as a certificate of public convenience and necessity has been issued. See *Resort Bus Lines, Inc.* v. *Interstate Commerce Commission,* 264 F. Supp. 742 (S.D. N.Y. 1967) *Eazor Exp., Inc.—Purchase—Fleet Highway Freight,* 101 M.C.C. 719; and *Walter Poole Extension—Tractors to Alabama,* 105 M.C.C. 511. However, we submit that none of the cited cases justify the summary action taken by Division 1 in its order of November 5, 1968.

The Temporary Authority Rules provide that applications may be denied for failure to meet statutory standards. (49 C.F.R. § 1131.4(b)(8)) Protestants have contended throughout this proceeding that applicant has failed to make the requisite showing upon which a grant of temporary authority could be granted; and this was the thrust of plaintiffs' complaint in *Black Ball Freight Service* v. *United States, supra.* Nevertheless, Division 1, instead of reopening this proceeding to reconsider its order of September 3, 1968, in light of the evidence of record, would permit applicant to make its case *de novo* by allowing DoD to submit a verified statement specifying "the commodities and points between which there is an immediate and urgent need for applicant's proposed service which cannot be met by existing carriers." We do not

believe that applicant should be allowed to so supplement its case at this late date.

Conclusion

Division 1's unprecedented action in this proceeding has deprived protestants of their right to contest the probative value of DoD's reply statement by totally disregarding their timely pleadings filed in opposition thereto, and would permit applicant to supplement its case in a manner contrary to the Commission's Temporary Authority Rules and General Rules of Practice. For these reasons, we move that Division 1 vacate and set aside its order of November 5, 1968, reopening this proceeding, upon its own motion, for reconsideration on the record as made together with such verified statements as may be filed.

Respectfully submitted,

American Trucking Associations, Inc.
Peter T. Beardsley
Richard A. Mehley
Nelson J. Cooney
John R. Bagileo
Attorneys

BEFORE THE
INTERSTATE COMMERCE COMMISSION

DOCKET No. MC-129908TA

AMERICAN FARM LINES—
TEMPORARY AUTHORITY—
GENERAL COMMODITIES

Petition to Vacate Order

Come now Black Ball Freight Service, Consolidated Freightways Corporation of Delaware, the Garrett Freightlines, Inc., and respectfully petition the Commission to vacate its order of November 5, 1968, reopening the above entitled proceeding, and in support thereof show:

I

As stated in the subject order the United States District Court for the Western District Court of Washington in Civil Action No. 3828, entitled Black Ball Freight Service et al. v. United States of America and the Interstate Commerce Commission did enter an order, which as here pertinent reads:

> "IT IS ADJUDGED AND ORDERED that that certain order of the Interstate Commerce Commission issued by it in its Docket MC-129908TA application of American Farm Lines, Oklahoma City, Oklahoma under date of September 3, 1968, be stayed from going into effect or otherwise be inoperative pending a determination by this Court of the issues of this proceeding, or until the further order of the Court."

II

That the Court having taken jurisdiction of this matter, the Commission was without power to re-open the proceeding. This is established by the applicable statutes and by the Commission's own rules.

The rules of the Commission do not provide for re-opening of the record in Temporary Authority application proceedings.

Rule 101 of the Interstate Commerce Commission's Rules of Practice is the rule applicable to the factual situation here present.

Rule 101(2) recites as here pertinent:

> "All decisions, orders or requirements of a division of the Commission in any proceeding shall be considered administratively final, except those involving issues of general transportation importance, those wherein the division reverses, changes or modifies a prior decision by a hearing officer, and those wherein the initial decision is made by a division. * * *"

In this proceeding the Temporary Authorities Board denied the application. American Farm Lines filed a petition for reconsideration. Division 1 of the Commission set aside the order of its Temporary Authorities Board and granted the application. All of these facts appear in the Commission's order of September 3, 1968, which is the subject of the Complaint.

Section 210a(a) of the Interstate Commerce Act (49 U.S.C.A. 310a(a)) specifically states that temporary authority applications may be processed without hearings. *Ex Parte No. MC-67, Motor Carrier Temporary Authorities,* 98 M.C.C. 483 covers the no-hearing process.

The Commission by regulation created a Temporary Authorities Board, a board of employes and relegated to it authority to determine temporary authority applications. The procedure as stated is specified in *Ex Parte MC-67.* No hearing is provided for.

It will be noted that Rule 101(2), quoted above, states that all decisions of a Division of the Commission shall be considered administratively final except where the Division

modifies a prior decision by a *hearing officer.* The Division did modify a decision, but it was not that of a hearing officer.

In *Transamerican Freight Lines, Inc.* v. *U. S.*, 258 F. Supp. 910, the Court stated that the disposition of an application by a Board did not constitute an oral hearing.

Moreover, Section 240.6 of C.F.R. (*Ex Parte MC-67*, 98 M.C.C. 483, page 496) provides:

> "§ 240.6 *Petitions.*
>
> (a) *Petitions for reconsideration.*—Pursuant to and in accordance with the Commission's General and Special Rules of Practice, petitions for reconsideration of orders of (1) the Temporary Authorities Board, and (2) Division 1 initially granting or denying temporary authority in proceedings not subject to prior determination by the Temporary Authorities Board, may be filed by any interested person."

Hence, the Commission has no further jurisdiction in this matter. The rules do not provide for a reopening of the record. They provide for reconsideration up to the level of the Division's action as an Appellate Division.

The rules we have referred to above are formally adopted rules of the Commission.

Ex Parte MC-67, 98 M.C.C. 483, at page 468 (Section 1131.2(c), provides that all supporting statements in temporary authority cases must be submitted with the application. There is no procedure for reopening or for the submission of additional data at a later date. If the applicant recognizes that it has failed to comply with the mandatory requirements of *Ex Parte MC-67*, it can refile and endeavor to overcome its failures in its prior application. The Court should not be whipsawed by the Commission merely because it now recognizes its error. Nor should the Plaintiffs be denied, if it becomes necessary, the right to chal-

lenge in Court the order of the Commission upon which it predicates its motion.

The order of the Commission, which is the subject of the Court Complaint, was that of an Appellant Division, see Exhibit A, attached to the Complaint.

Section 17 of the Interstate Commerce Act is the controlling statute. It provides:

(Divisions of Commission)

"SEC. 17 (1) The Commission is hereby authorized by its order to divide the members thereof into as many divisions (each to consist of not less than three members) as it may deem necessary, which may be changed from time to time. Such divisions shall be designated, respectively, division one, division two, and so forth, or by a term descriptive of the principal subject, work, business, or function assigned or referred to such divisions. The Commission may designate one or more of its divisions as appellate divisions. Any Commissioner may be assigned to such division or divisions as the Commission may direct, and the senior in service of the Commissioners constituting a division shall act as chairman thereof unless otherwise directed by the Commission. When a vacancy occurs in any division or when a Commissioner because of absence, or other cause, is unable to serve thereon, the Chairman of the Commission or any Commissioner designated by him for that purpose may serve temporarily on such division until the Commission otherwise orders.

(Reference to Divisions)

(2) The Commission may by order direct that any of its work, business, or functions under any provisions of law (except matters required to be referred to joint boards by Section 205, and except functions vested in the Commission under this section), or any matter

which shall have been or may be referred to it by Congress or by either branch thereof, be assigned or referred to any division, to an individual Commissioner, or to a board to be composed of three or more eligible employees of the Commission (hereinafter in this section called a 'board') to be designated by such order, for action thereon, and the Commission may by order at any time amend, modify, supplement, or rescind any such assignment or reference. The following classes of employees shall be eligible for designation by the Commission to serve on such boards: examiners, directors or assistant directors of bureaus, chiefs of sections, and attorneys. The assignment or reference, to divisions, of work, business, or functions relating to the lawfulness of rates, fares, or charges shall be made according to the character of regulation to be exercised and not according to the kind or class of the carriers involved or to the form or mode of transportation in which such carriers may be engaged. When an individual Commissioner, or any employee, is unable to act upon any matter so assigned or referred because of absence or other cause, the Chairman of the Commission may designate another Commissioner or employee, as the case may be, to serve temporarily until the Commission otherwise orders.

* * * * *

(*Authority of Division*)

"(4) A division, an individual Commissioner, or a board shall have authority to hear and determine, order, certify, report, or otherwise act as to any work, business, or functions assigned or referred thereto under the provisions of this section, and with respect thereto shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations. The secretary and seal of the Commission shall be the secretary and seal

of each division, individual Commissioner, or board. Except as otherwise provided in this section, any order, decision, or requirement of a division, an individual Commissioner, or a board, with respect to any matter so assigned or referred, shall have the same force and effect, and may be made and evidenced in the same manner as if made or taken by the Commission.

(*Testimony at Public Hearings*)

(5) Any finding, report, or requirement of an individual Commissioner or board, with respect to any matter so assigned or referred involving the taking of testimony at a public hearing, shall be accompanied by a statement in writing of the reasons therefor, together with a recommended order, which shall be filed with the Commission. Copies thereof shall be served upon interested parties (including, in proceedings under Part II, persons specified in Section 205(e), who may file exceptions thereto, but if within 20 days after service upon such persons, or within such further period as the Commission or a duly designated division thereof may authorize, no exceptions shall have been filed, such recommended order shall become the order of the Commission and become effective unless within such period the order shall have been stayed or postponed by the Commission or by a duly designated division thereof. The Commission, or a duly designated division thereof, upon its own motion may, and where exceptions are filed it shall, reconsider the matter either upon the same record or after further hearing, and such recommended order shall thereupon be stayed or postponed pending final determination thereof. When deemed by the Commission to be appropriate for the efficient and orderly conduct of its business, it may authorize duly designated employee boards to perform, under this paragraph functions of the same character as those which may be performed thereunder by duly

designated divisions. (*Sub-section (5) as amended September 14, 1961.*)

(*Rehearings; Reargumentsy; Reconsiderations*)

(6) After a decision, order, or requirement shall have been made by the Commission, a division, an individual Commissioner, or a board, or after an order recommended by an individual Commissioner or a board shall have become the order of the Commission as provided in paragraph (5), any party thereto may at any time, *subject to such limitations as may be established by the Commission as hereinafter authorized,* make application for rehearing, reargument, or reconsideration of the same, or of any matter determined therein. *Such applications shall be governed by such general rules as the Commission may establish.* Any such application, if the decision, order, or requirement was made by the Commission, shall be considered and acted upon by the Commission. If the decision, order, or requirement was made by a division, an individual Commissioner, or a board, such application shall be considered and acted upon by the Commission or referred to an *appropriate appellate division for consideration and action.* Rehearing, reargument, or reconsideration may be granted if sufficient reason therefor be made to appear; *but the Commission may, from time to time, make or amend general rules or orders establishing limitations upon the right to apply for rehearing, reargument, or reconsideration* of a decision, order, or requirement of the Commission *or of a division* so as to *confine such right to proceedings,* or classes of proceedings, *involving issues of general transportation importance.* Notwithstanding the foregoing provisions of this paragraph, any application for rehearing, reargument, or reconsideration of a matter assigned or referred to an individual Commissioner or a board, under the provisions of paragraph (2), if

such application shall have been filed within 20 days after the recommended order in the proceeding shall have become the order of the Commission as provided in paragraph (5), and if such matter shall not have been reconsidered or reheard as provided in such paragraph, shall be referred to an appropriate appellate division of the Commission and such division shall reconsider the matter either upon the same record or after a further hearing.

(*Modification of Reports*)

(7) If after rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission or appellate division may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after rehearing, reargument, or reconsideration, reversing, changing, or modifying the original determination shall be subject to the same provisions with respect to rehearing, reargument, or reconsideration as an original order.

• • • • •

(*Judicial Review*)

(9) When an application for rehearing, reargument, or reconsideration of any decision, order, or requirement of a division, an individual Commissioner, or a board with respect to any matter assigned or referred to him or it shall have been made and shall have been denied, or after rehearing, reargument, or reconsideration otherwise disposed of, by the Commission or an appellate division, a suit to enforce, enjoin, suspend, or set aside such decision, order, or requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable

in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise." (Emphasis supplied)

We have set forth the pertinent portions of the statute, because each such part relates to the matter herein presented.

In *Transamerican Freight Lines, Inc.* v. *U. S.*, 258 F. Supp. 910, the Court had before it the question of whether the Commission had power to review an appellate division decision, or otherwise to proceed further.

The Court there stated at page 913-915:

"By Section 17(1) the Commission is authorized by order to divide its members into as many divisions (each to consist of not less than three members) as it deems necessary, to be designated division 1, division 2, etc., or by a term descriptive of the function assigned to it by the Commission. One or more of the divisions may be designated as an 'appellate division.' Section 17(2) empowers the Commission by order to assign any matter, subject to exceptions presently irrelevant, to 'any division, to an individual Commissioner, or to a board to be composed of three or more eligible employees of the Commission.' Section 17(4) provides that either of these three entities—'a division, an individual Commissioner, or a board'—may hear and determine any business assigned to it, and that the decision, except as otherwise provided in section 17, shall have the same force and effect as if made by the Commission.

Subparagraphs (5), (6), (7) and (9) of section 17 are particularly relevant. These subparagraphs make it clear that when Congress used the word 'division' it did not mean to include an 'appellate division,' and that when it meant to refer to an 'appellate division' it used that precise term.

Subparagraph (5) provides that after an individual Commissioner or board renders a decision in a matter assigned to it involving the taking of testimony at a public hearing, the 'Commission or a duly designated division * * * shall' in specified circumstances reconsider the matter. At this point no reference is made to reconsideration by an appellate division. This is particularly significant when read in conjunction with subparagraph (6). Subparagraph (6) provides that if the matter reviewable by the 'Commission or a duly designated division' under subparagraph (5) has not been reconsidered by either of them, then any application for reconsideration 'shall be referred to an appropriate appellate division.'

Furthermore, subparagraph (6) specifies the entities from whose decisions applications for rehearing, reargument or reconsideration (hereinafter 'reconsideration') may be filed, and designates the entities to consider and act upon such applications. It states broadly that after a decision shall have been rendered by 'the Commission, a division, or individual Commissioner, or a board,' any party may apply for reconsideration of the decision, subject to such statutory authorized limitations as may be established by the Commission. In this general statement of the decisions reviewable there is no provision made for the filing of an application to reconsider a decision of an 'appellate division.' Subparagraph (6) then specifies with particularity the entities which are to consider and act upon the applications. If the decision is made by the Commission, the application must be considered by 'a division, an individual Commissioner, or a board,' the application may be considered and acted upon either by (1) the Commission or (2) by an 'appropriate appellate division' to which the Commission refers it. Thus, in specifying the entities whose decisions are subject to reconsideration, the statute for a second time omits any reference to an 'appellate division.'

(Reconsideration by ICC of Decision of Appellate Division)

Section 17(6) authorizes the Commission to adopt rules establishing limitations upon the right to apply for reconsideration of a decision 'of the Commission or of a division so as to confine such rights to proceedings, or classes of proceedings, involving issues of general transportation importance.' But, here again, for a third time in the same subparagraph, no provision is made for the reconsideration by the Commission of a decision of an 'appellate division.'

Subparagraph (7) of section 17 follows the same language pattern as does subparagraph (6). Thus it provides that if upon a reconsideration of a decision of 'a division, an individual Commissioner, or board' (note, no mention of an 'appellate division'), it appears that the decision is unjust or unwarranted, 'the Commission or appellate division' may reverse, change or modify the same accordingly.

Subparagraph (9), of section 17 fortifies the conclusion that once an application for reconsideration has been denied by an 'appellate division,' the Commission cannot exercise any right of review. It provides that when an application for reconsideration of a decision of a 'division, individual Commissioner, or board' shall have been denied or otherwise disposed of by the 'Commission or an appellate division,' a suit to enforce, enjoin, suspend or set aside the decision may be brought in the District Court. Once more, no reference is made to an application for the reconsideration of a decision of an 'appellate division.' "

Also at page 916 it was stated:

"The need for relieving the Commission of the burden of passing upon applications to reconsider many decisions of minor importance was recognized in the

annual report for 1935 which the Commission submitted to Congress. *Forty-Ninth Annual Report of the Interstate Commerce Commission*, pp. 95-97 (1935). That report proposed amendments to sections 16a, 17(4) and 17(6) of the Act, *supra*, which radically affected the review procedures and for the first time provided for appellate divisions. More specifically, the proposed amendments provided that when a decision was rendered by a division which had heard a case in the first instance, an application for reconsideration thereof might be heard and determined either by the Commission, or by an appellate division, to which the Commission referred it. An application for reconsideration of a decision of an individual Commissioner or board could be filed with a division and an application for reconsideration of the division's decision could be filed with an appellate division. In all instances when an application to reconsider the decision of either a division, individual Commissioner, or board was filed with an acted upon by an appellate division, its decision was final and no further relief within the Commission was possible.

The report of the Commission explained these amendments as follows:

> 'The foregoing amendments would authorize the Commission to create an appellate division or divisions of not less than five Commissioners, to which the Commission could refer applications for rehearings either generally or in particular cases or classes of cases. The decision of the appellate division in such cases would be final the same as if it were by the entire Commission. This would relieve the Commission of the necessity of having 11 Commissioners consider many cases which are not of such character or importance as to warrant such procedure.

> It is not believed that any party would suffer injury or any cause would be prejudiced by being finally disposed of by an appellate division of three members.'
>
> *Forty-Ninth Annual Report of the Interstate Commerce Commission*, p. 97 (1935)."

The Court went on to further hold at page 918:

> "The statute confers upon the Commission the power to review a decision of an individual Commissioner, a division, or a board, if the Commission considers the matter involved to be of sufficient importance to warrant Commission review. The Commission may accomplish this simply by reviewing the decision itself instead of referring it to an appellate division. The Commission has the choice in the first instance whether it or an appellate division will act upon an application to reconsider a decision. But once the Commission has referred the matter to an appellate division and the latter has spoken, under the statute that is the end of the matter so far as the Commission is concerned. Any review of the decision thereafter can only be had by a Court."

We recognize that the Commission has chosen to ignore this decision in two cases. In each the Commission attempted to get around the *Transamerican Farm Lines* decision. In the first case, *Eazon Express, Inc.—Purchase—Fleet Highway Freight Lines, Inc.*, 101 M.C.C. 719, the Commission stated at page 720 that the *Transamerican Case* is not controlling because the Court's above quoted holding was dicta. Likewise, in the second case, *Walter Poole Extension—Tractors to Alabama*, 105 M.C.C. 511, the Commission, at page 512, said the holding was dicta.

The quotations from the *Transamerican Case* clearly are not dicta, they cover the issue before the Court. This is

confirmed by the reporter's headnotes to the decision, which reads as follows:

"1. *Commerce*

Under the Interstate Commerce Act the Commission has no power to review an appellate division decision, even if the proceeding does involve an issue of general transportation importance. Interstate Commerce Act, § 17 as amended 49 U.S.C.A. § 17.

2. *Commerce*

The word 'division' in Interstate Commerce Act section relating to Commission procedure and delegation of duties and rehearings does not include an 'appellate division'. Interstate Commerce Act, § 17 and (2, 4-7, 9) as amended 49 U.S.C.A. § 17 and (2, 4-7, 9).

(See publication Words and Phrases for other judicial constructions and definitions.)

3. *Commerce*

Under the Interstate Commerce Act, once an application for reconsideration has been denied by an 'appellate division,' the Commission cannot exercise any right of review. Interstate Commerce Act, § 17(9) as amended 49 U.S.C.A. § 17(9).

4. *Commerce*

The purpose of provision in Interstate Commerce Act that when application for reconsideration of decision of division, individual Commissioner, or board shall have been denied or otherwise disposed of by the Commission or an appellate division, a suit to enforce, enjoin, suspend or set aside the decision may be brought in the district court is to require a party aggrieved by administrative action to exhaust his remedy before filing an action in the courts. Inter-

state Commerce Act, § 17(9) as amended 49 U.S.C.A. § 17(9).

5. *Commerce*

Congress never intended that the Interstate Commerce Commission should review a matter once it was decided by an appellate division to which the Commission had referred it. Interstate Commerce Act, § 17 as amended 49 U.S.C.A. § 17."

As stated in the Transamerican Freight Lines Case, supra:

"* * * But once the Commission has referred the matter to an appellate division and the latter has spoken, under the statute that is the end of the matter so far as the Commission is concerned. Any review of the decision thereafter can only be had in Court."

The described rules prescribed in *Ex Parte 67* are procedural rules. The Courts have universally and consistently ruled that procedural rules are binding upon the parties to which they apply and also upon the administrators who issue them. *Service* v. *Dulles,* 354 U.S. 363, 372, 388-389; *Arcardi* v. *Shaughnessy,* 347 U.S. 260, 265; *Bridges* v. *Wixon,* 326 U.S. 135, 163; and *Coleman* v. *Brucker,* 257 Fed. 2d 661, where at page 662 it was held:

"* * * And in *Service* v. *Dulles,* 1957, 354 U.S. 363, 372, 77 S. Ct. 1152, 1157, 1 L. Ed. 2d 1403, the Court sustained Service's contention 'that the Secretary's action is subject to attack under the principles established by this Court's decision in United States ex rel *Arcardi v. Shaughnessy,* 347 U.S 260 (74 S. Ct. 499, 98 L. Ed. 681), namely, that regulations validly prescribed by a government administrator are binding upon him as well as the citizen, and that *this principle holds even when the administrative action under review is discretionary in nature.*'" (Emphasis supplied)

Likewise, in *Atwood's Transport Lines, Inc.* v. *U. S.*, 211 Fed. Supp. 168, affirmed per curiam, 373 U.S. 377, it was stated that:

> "Rules and regulations promulgated by Governmental establishments pursuant to statutory authority have the force and effect of law, and concededly are subject to same tests as statutes. * * *"

As an initial point, it may be agreed that the Commission in disposing of temporary authority applications under Section 210(a) may establish standards or policies governing disposition of such applications, either through announcements in individual cases or through establishment of standards under its rule-making powers. Moreover, we can agree that under Section 210(a) the Commission has broad discretionary powers, just as it does in the administration of a number of other sections of the Interstate Commerce Act. In the area of temporary authorities, the Commission has elected to establish standards through a rule-making proceeding. And since they have remained unamended since their effective date of July 1, 1965, the Commission is, like all others, bound by those regulations which have the force and effect of law.

In *Columbia Broadcasting System* v. *United States*, 316 U.S. 407, the Supreme Court stated (Page 422):

> "Undoubtedly regulations adopted in the exercise of the administrative rule-making power, like laws enacted by legislatures, embody announcements of policy. But they may be something more. When, as here, the regulations are avowedly adopted in the exercise of that power, couched in terms of command and accompanied by an announcement of the Commission that the policy is one 'which we will follow in exercising our licensing power,' they must be taken by those entitled to rely upon them as what they purport to be —an exercise of the delegated legislative power—

which, until amended, are controlling alike upon the Commission and all others whose rights may be affected by the Commission's execution of them. * * *"

Furthermore, the fact that the regulations prescribed by an administrative agency pertain to a "discretionary matter" does not in any way alter their binding nature. *Service* v. *Dulles,* 354 U.S. 363 (1957). See also: *Mississippi Valley Barge Company* v. *United States,* 252 F. Supp. 162 (E.D. Mo., 1966) and other cases cited above.

Recent cases for the same proposition include *Public Utilities Commission of California* v. *U. S.,* 355 U.S. 534 where at page 542 the Court said that regulations have the force of law. Likewise, to the same effect see *Paul* v. *United States,* 371 U.S. 245 at 255.

A case particularly in point relative to this matter is *Atchison, Topeka and Santa Fe Ry. Co.* v. *U. S.,* 231 Fed. Supp. 422, where it was stated:

"On the other hand, two serious problems are raised by this practice of the Commission. The first relates to the constitutional principle of separation of powers. In the absence of express constitutional provision for executive agencies with quasi-legislative and/or quasi-judicial functions, their clear constitutionality rests upon their capacity to function exclusively within the limits of each of their several personalities. It is only where there is a pretense of one personality, while in fact there is the performance of another, that the action of a regulatory agency with judicial functions becomes arbitrary, capricious and unconstitutional. The act of defending in court a judicial determination is executive and not judicial. When to perfect that defense an *ex parte* reconsideration of a judicial determination is made, such reconsideration is an executive act done in the guise of the judicial, and is arbitrary and unfair. It has long been established that even where two or even three heads of these great and

splendid multi-headed creatures of modern government perform at the same time, even where that multi-performance is acted out by the same unit or even by one individual, the performance of each head must be true to its character, and one may not act in the guise of the other."

WHEREFORE, it is prayed that the Commission vacate its order of November 5, 1968.

Dated at Portland, Oregon, November 19, 1968.

Respectfully submitted,

WILLIAM B. ADAMS
624 Pacific Building
Portland, Oregon 97204
Attorney for Protestants above named.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

MC-129908 TA

In the Matter of:

AMERICAN FARM LINES—TEMPORARY AUTHORITY APPLICATION

Verified Statement of Vincent F. Caputo

My name is Vincent F. Caputo, I am employed by the Department of Defense (DOD) as the Director for Transportation and Warehousing Policy. The duties of my position are such that I am charged with the responsibility for, among other things, the efficient and economical operation of physical distribution activities of the DOD.

This Commission has previously been advised by DOD that it has a substantial and continuing need for the services

of American Farm Lines in the transportation of general commodities, including Class A and B explosives, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, Arizona, California, Nevada and Utah.

The Commission, by order served 5 November 1968, reopened this proceeding "for the purpose of receiving a verified statement from the Department of Defense which shall, to the extent the national defense and security will permit disclosure, specify the commodities and points between which there is an immediate and urgent need for applicant's proposed service which cannot be met by existing carriers." This statement is submitted in response to that order.

In discharging its responsibility for conduct of the nation's defense, the DOD must effect movement of a vast quantity of a multitude of different commodities between innumerable points and places within the United States and abroad. A substantial percentage of its total transportation requirement is for movement of diverse types of traffic between points in the states of Kentucky, Indiana, Illinois, Missouri, Louisiana, Arkansas, Texas, Kansas and Oklahoma, on the one hand, and, on the other, points in Washington, California, Arizona, Nevada and Utah. For example, in the 11 month period between 1 August 1967, and 30 June 1968, the DOD required transportation service for the movement of the following amounts of "general commodities (including Class A and B explosives)" to points in Washington, California, Arizona, Nevada and Utah:

1. 38,892,000 pounds from points in Kentucky;
2. 480,656,000 pounds from points in Indiana;
3. 173,538,000 pounds from points in Illinois;
4. 91,364,000 pounds from points in Missouri.

5. 189,312,000 pounds from points in Louisiana;

6. 18,858,000 pounds from points in Arkansas;

7. 252,844,000 pounds from points in Texas;

8. 21,482,000 pounds from points in Kansas; and

9. 190,118,000 pounds from points in Oklahoma.

Typical origins from which traffic moved in the indicated period include governmental and commercial installations located at or near such points as: St. Louis, Lake City, Sweetsprings, Hermann, Glasgow, Harrisonville, Springfield and Joplin, Missouri; McAlester, El Reno, Lawton, Oklahoma City, Miami, Southard and Tulsa, Oklahoma; Rogers, Pine Bluff, Camden and Magnolia, Arkansas; Avon, Richmond and Louisville, Kentucky; Crane, and Indianapolis, Indiana; Alton, East Alton, Granite City and Marion, Illinois; Texarkana, Amarillo, Fort Worth, Dallas, Garland, Carrollton, Longview and Karnack (Marshall), Texas; Atchison, Parsons, Wichita and Junction City, Kansas; and Doyline, Louisiana. Typical destinations to which this traffic moved include installations at or near the following points: Port Chicago, Fallbrook, San Diego, Victorville, Twenty-Nine Palms, Seal Beach, Fairfield, Merced, China Lake, Vallejo, Sacramento, Industrial City, Oakland, Herlong, Concord, Arlington, Chico, Lathrop and Susanville, California; Bellemont and Yuma, Arizona; Ogden, Salt Lake City and Warner, Utah; Fallon and Hawthorn, Nevada; and Bangor, Tacoma and Bremerton, Washington.

In the same period, DOD required service for movement of 499,968,000 pounds of "general commodities (including Class A and B explosives)" in the reverse direction. Of that total, 17,914,000 pounds moved from points in Arizona; 385,906,000 pounds from points in California; 19,528,000 pounds from points in Nevada; 54,342,000 pounds from points in Utah; and 22,278,000 pounds from points in Wash-

ington. Typical origins are: Los Angeles, Concord, Sacramento, Oakland, Lathrop, Richmond, Twenty-Nine Palms, Fairfield, El Segundo, San Bernardino, La Mirada, Vallejo, San Jose, Santa Clara, Vernon, El Monte, Herlong, Lompac, Fallbrook, Culver City, Seal Beach, Burbank, Long Beach, National City, Marysville, Oceanside, Victorville, Lyoth, Palmdale and Stockton, California; Hawthorn and Nellis Air Force Base, Nevada; Yuma, Litchfield Park, Flagstaff, Phoenix, Goodyear, Tucson and Glendale, Arizona; Bangor, Tacoma and Bremerton, Washington; and Ogden, Tooele and Dugway, Utah. These movements were destined to numerous points distributed throughout the involved midwestern, southern and southwestern states. Indicative of this is the fact that these destinations include virtually all of the points at which "westbound" traffic is originated and also includes some points at which traffic moving in the reverse direction is not originated.

As shown in the period between 1 August 1967, and 30 June 1968, the DOD required service for the movement of a total of more than 1,900,000,000 pounds of freight between the territories American Farm Lines seeks to serve. That traffic consisted of thousands of different articles and commodities. Representative items are: numerous items falling with the definition of Class A and Class B explosives; ammunition; ammunition links; non-explosive practice bombs and mines; bomb bodies and bomb body parts; aerial bomb cluster adapters; bullets or bullet cores; canisters; salvage cannon; new and used cartridge cases; coils; dummy charges; fuzes; dummy grenades; gun wads; solid or practice projectiles or rocket heads; projectile or rocket parts; empty projectile or rocket parts; electric, electronic or scientific instruments; iron or steel shot; bomb band shipping assemblies and shell shipping assemblies; shipping cans; bomb fin assemblies or rocket fin assemblies; howitzer cannons and mortars; gun barrels and/or gun mounts; machined iron and steel articles; plastic and plastic and metal combined; rocket chambers; bomb racks;

internal combustion, jet and steam engines and parts thereof; paper articles including forms, booklets and cards; small arms; hand or rifle grenades; smoke grenades; starting cartridges or fuzes; tents; paulens; life rafts; runway covers; boots; shoes; unclassified and unsegregated salvage; surplus equipment and supplies returned from overseas; military impediments; helium gas and returned empty chambers; and canned fruits, vegetables and dried fruit.

This tremendous volume of traffic that DOD must move between numerous and varying points in the involved territories is transported by rail or motor vehicle and, in extreme emergency situations, by aircraft. A part of this traffic requires that it be transported from origin to destination in the most expeditious manner possible. However, the use of aircraft is prohibitively expensive for movement of volume shipments except in the most extreme emergencies. It follows, therefore, that the availability of motor carriers that provide service over the most direct routes and in a manner that restricts time in transit to a minimum is imperative. This defense need for speed has not been met in many, many instances by the current certified motor carriers due to a number of factors, including the following:

1. The majority of all certificated motor carrier service now available to the DOD is provided upon a joint line basis. In fact, a substantial part of the certificated motor carrier service now available between major origins and destinations, in point of volume, requires participation by at least two carriers in addition to the originating. Experience has shown that where joint line service is involved, we must in some cases allow no less than 24 hours for each 300 miles in order to arrive at a "time in transit" that can be relied upon. In contrast, single line service operating over the most direct routes available, by use of "two-man driving teams" generally can be relied upon to consistently provide delivery within a

transit time computed by allowing 8 nours for each 300 "short line" miles involved.

2. Virtually all carriers currently holding authority to provide service between points in the territories involved here are "regular route" carriers. They must necessarily traverse prescribed routes which are often circuitous. Thus, even where such carriers are authorized to provide service upon a single line basis between particular origins and destinations, they are still required to operate over greater distances than would be necessary if they held "irregular route" authorizations and

3. Some "regular route" carriers utilize "single" drivers rather than "two-man driving teams". These "single" drivers operate the vehicle between established "relay" points. Further, I understand that some of these carriers do not "qualify" or license their power units in all states through which they operate. As a result, even in those instances where they hold authority for provision of single line service, it is routine for these "regular route" carriers to use a number of different power units and drivers in effecting delivery of a single shipment moving between points in the territories involved here. This situation sometimes results in delays due to such things as temporary unavailability of power equipment at relay points, unavailability of a driver for immediate movement beyond the relay points, and the myriad of other inevitable snags that seem to occur when it is necessary for shipments to be processed through a number of different terminals.

As I pointed out before, service offered by currently authorized motor carriers for the movement of DOD traffic between points in the involved territories is not generally available upon a single line irregular route basis. This has created a situation where "times in transit" required for the movement of given shipments are in excess of those dictated by the short line distances between origins and destinations. The extent to which "times in transit" experienced in use of currently certificated carriers ex-

ceed those which would be experienced if service were performed by irregular route carriers on a single line basis by use of "two-man driving teams" is clearly disclosed by the following examples:

1. Some shipments of Class A and Class B explosives moving from McAlester, Oklahoma, to Bangor, Washington, are in transit for periods varying from 6 to 11 days when use of "joint line" service is necessary. In contrast, the one carrier now holding a certificate authorizing it to provide single line service for movement of such shipments on an irregular route basis consistently effects "third morning" delivery at Bangor, Washington;

2. Shipments of empty shell cases from San Jose, California, to Doyline, Louisiana, consistently require transit times of 5 to 6 days when handled on a "joint line" basis. In contrast, delivery is made within 72 hours after dispatch of the shipment from San Jose, California, when service is provided on a single line basis by carriers using "two-man driving teams"; and

3. The only known certificated carrier service now available for movement of the various types of commodities being shipped from St. Louis, Missouri, to points throughout California is that of "regular route" carriers. In some instances service is available from this type of carrier on a single line basis while in other instances the only service available is that offered on a "joint line" basis. However, even in those instances where service is available from "regular route" carriers on a single line basis, "transit times" that could be afforded by carriers holding "single line" authority for operation over irregular routes would be little more than half that now experienced through use of "regular route" carriers.

From a Defense point of view, any transportation system which is largely comprised of carriers holding "bits and

pieces" of authority which preclude rendering of expeditious service is inherently inefficient. In addition, such a system is inefficient because it does not permit the provision of transportation service that is fully possible and practical under proven techniques. Yet, this is the precise situation that DOD has for years been forced to "live with" in its effort to efficiently and economically procure and distribute the vast quantities of various commodities, including Class A and Class B explosives, required for implementation of the nation's policies related to the national defense. This is well illustrated by the fact that to my knowledge no carrier holds authority permitting it to provide service on a single-line basis for movement of all of the involved commodities between *all* points in any one of the nine midwestern, southern and southwestern states involved in this proceeding, on the one hand, and, on the other, all points in *any* of the five involved western states. In fact, DOD has been unable to find a single carrier that is authorized to provide such service from *any* origin in *any* of the midwestern, southern and southwestern states involved here to *all* points in the state of California. The same situation prevails with respect to authority of presently certificated carriers for movement of the involved commodities in the reverse direction. In addition, no carrier to my knowledge holds authority to provide single line service, whether over circuitous routes or otherwise, for movement of all of the involved commodities from many of our major origins to many of our major destinations. The extent to which this deplorable situation exists is clearly shown by the following examples:

1. There is no known carrier authorized to transport DOD traffic in single line service from the Naval Ammunition Depot at McAlester, Oklahoma, to Port Chicago, Fallbrook, Herlong, Camp Pendleton, Ft. Ord, George Air Force Base, or Twenty-Nine Palms, California; Fallon or Hawthorn, Nevada; Tooele Air Force Base, Utah; or Bellemont, Arizona:

2. There is no known carrier authorized to transport DOD traffic in single line service from Rogers, Arkansas, to any point in California;

3. There is no known carrier authorized to provide single line service for movement of DOD traffic from either Pine Bluff or Camden, Arkansas, to any destination in California, Arizona, Nevada or Utah;

4. There is no known carrier authorized to provide single line service for movement of DOD traffic from Magnolia, Arkansas to any point in California;

5. There is no known carrier authorized to provide single line service for movement of DOD traffic from the Blue Grass Ammunition Depot, Avon, Kentucky, or from Blue Grass Activity, Richmond, Kentucky, to points in California.

6. There is no known carrier authorized to transport Class A and Class B explosives on a single line basis from Lake City Ammunition Plant, Lake City, Missouri, to points in California.

7. There is no known carrier authorized to transport DOD traffic on a single line basis from Lone Star Ammunition Plant or from the Red River Arsenal, Defense, Texas, to points in Arizona, Nevada, Utah, California or Washington;

8. There is no known carrier authorized to provide single line service from Longhorn Army Ammunition Plant, Karnack, Texas, to points in the involved western states;

9. There is no known carrier authorized to provide single line service from the Kansas Army Ammunition Plant, Parsons, Kansas, to points in the western states involved;

10. There is no known carrier authorized to provide single line service for movement of DOD traffic from

the Sacramento Army Depot, Sacramento, California, to Ft. Sill, Oklahoma, or to Ft. Riley, Kansas; and

11. There is no known carrier authorized to provide single line service for movement of DOD traffic from Twenty-Nine Palms, California, to Defense, Texas; from Sharpe Army Depot, Lathrop, California, to Ft. Sill, Oklahoma, or to Ft. Leonard Wood, Missouri; from Yuma Proving Grounds, Yuma, Arizona, to Amarillo, Texas; from Travis Air Force Base, Fairfield, California, to Crane, Indiana; from La Mirada, California, to Crane, Indiana; from San Jose or Santa Clara, California, to Pine Bluff, Arkansas, or Shreveport, Louisiana; from Vernon, California, to Pine Bluff, Arkansas; from Sierra Army Depot, Herlong, California, to Ft. Riley, Kansas, or to Lone Star Army Ammunition Plant, Defense, Texas, or to Crane Naval Ammunition Depot, Crane, Indiana; from Fallbrook, California, to Naval Ammunition Depot, McAlester, Oklahoma; from Litchfield Park, Arizona, to Longhorn Army Ammunition Plant, Karnack, Texas; from from Goodyear, Arizona, to Lexington, Kentucky; from Naval Ammunition Depot, Hawthorn, Nevada, to Naval Ammunition Depot, McAlester, Oklahoma; from Tracy Defense Depot, Lyoth, California, to Oklahoma City, Oklahoma, or to Ft. Leavenworth and Ft. Riley, Kansas; from Stockton, California, to Crane, Indiana.

DOD is charged with the total responsibility for the execution of all functions incidental or necessary to the defense of the country. It is also charged with the responsibility for conducting those functions in the most efficient and economical manner possible. However, enforced reliance upon motor carrier service available from presently certificated carriers for movement of vast quantities of freight, comprised of "general commodities (including Class A and B explosives)", between points in territories

involved here has effectively subverted efforts to establish the most economical and efficient distribution system possible. This is evident, as I previously pointed out, from the fact that unduly excessive "times in transit" are experienced in the movement of this traffic by use of the currently authorized carriers. I might also point out that this results in higher cost to the taxpayers.

The fact that there is a paucity of expedited service available from presently authorized carriers is, in and of itself, ample proof that the additional service which American Farm Lines seeks authority to provide is necessary *to assure that the Government's reasonable transportation requirements* are met. In addition, I feel that the quantity of freight which DOD must regularly move between the involved areas is so vast that the need for the grant of authority sought is beyond question.

In many instances it is necessary to closely coordinate the arrival of inbound shipments with production schedules of manufacturing installations. For example, production at the Louisiana Army Ammunition Depot, Doyline, Louisiana, and at the Pine Bluff Arsenal, Pine Bluff, Arkansas, is dependent upon coordinated arrival of inbound materials. This is true because neither of these installations warehouse some types of ammunition produced at those points and incoming shipments of such items as empty shell cases are fed into the production line directly from the delivery vehicle. Accordingly, it is imperative that such inbound shipments arrive at the time expected. In addition, production of the shell cases at San Jose, California, is such that it is impossible to gear shipments from that point to Doyline and Pine Bluff so as to "accommodate" them to the excessive and widely varying transit times which result from use of most presently available "joint-line" services of regular route carriers. Every possible "routing" has been used for movement of these shipments. However, only one of the currently certificated common

carriers on occasion has proven able to provide the "timed" delivery necessary to efficient operation of production facilities located at such points as Doyline, Louisiana, and that carrier alone does not have the capacity to move the tremendous volume required. This situation exists even though those carriers were specifically made aware of the fact that the "timed" delivery requested was essential to the national defense effort. Under these circumstances, there is no doubt but that the continued existence of situations of the type just described clearly shows that the Government has a substantial requirement for provision of expedited service of a type which "regular route" carriers are not now providing.

A substantial segment of the involved traffic consists of movements to air bases and port installations for transshipment beyond the continental limits of the United States. When shipments are assigned to specified vessels or aircraft for transshipment, it is imperative that they arrive at destination on a planned basis before the scheduled ship loading or airlift date. Nevertheless, the DOD has experienced situations where shipments routed via currently certificated carriers fail to arrive at destination in time for the scheduled transshipment. This occurs even though shipments are loaded at interior origin points sufficiently in advance of the scheduled transshipment date to allow for the transit times normally required by the particular carriers involved. A concrete example of this type of difficulty experienced in use of presently authorized carriers lies in the fact that failure of certificated carriers to provide promised three-day transit time on shipments from St. Louis, Missouri, to San Francisco, California, has resulted in shipments arriving at destination after ships which were scheduled to move the traffic overseas had departed. There can be no question whatever but that the existence of service failures of this type are themselves sufficient to require that additional motor carrier service be made available for movement of DOD traffic.

It is at times desirable to formulate truckload shipments which are composed in part of Class A and Class B explosives and in part of various other types of commodities that are normally referred to as "freight all kinds". However, it is many times impossible to ship in this fashion because carriers that hold authority for transportation of "general commodities" often do not hold co-extensive authority for transportation of Class A and Class B explosives. The inherent inadequacy in service that can be offered by carriers whose authority is "hamstrung" in this fashion is obvious.

As has been demonstrated, the type of service which can be provided by currently certificated carriers often does not meet DOD's transportation requirements for movement of traffic that requires expedited movement and precisely timed delivery. However, until recently DOD had no practical choice but to rely entirely upon that service. That situation changed in the latter part of 1966 when a number of cooperative agricultural associations, including American Farm Lines, made themselves known to DOD and began soliciting its traffic for movement pursuant to the exemption from economic regulation provided by Section 203(b)(5) of the Interstate Commerce Act. In due course, DOD began using the service offered by American Farm Lines for movement of Class A and Class B explosives and for movement of "general commodities" between various points in Kentucky, Illinois, Indiana, Missouri, Arkansas, Louisiana, Texas, Kansas and Oklahoma, on the one hand, and, on the other, various points in California, Arizona, Nevada and Utah and other states.

It was immediately discovered that the service of American Farm Lines was superior to that available from presently certificated motor carriers because its service was invariably provided by use of "two-man driving teams" operating over the most direct routes possible from origin to destinations and which was available between any and all points in broad multi-state territories.

The completely flexible and highly expedited service offered by American Farm Lines was used with ever increasing frequency throughout 1967 and the first several weeks of 1968. This was due to the fact that American Farm Lines was an organization whose service was capable of meeting DOD's accelerating need for such regularly required transportation niceties as precisely "timed deliveries" and absolute minimization of time in transit. Thus, American Farm Lines transported a total of 74,155,685 pounds in the period between December 1966 and 30 June 1968. In every instance the service provided was excellent and met DOD service requirements.

Service provided by American Farm Lines is used to complement rather than to replace service available from certificated motor carriers and collectively these services have proven adequate to meet the Government's transportation requirements. Accordingly, DOD now relies upon the availability of its expedited and flexible service as well as the more rigid service available from certificated carriers in the movement of DOD traffic. The use of service provided by American Farm Lines has proven most beneficial. Examples of this include:

1. On 30 August 1968, the DOD shipped 22 truckloads of small arms ammunition from Lake City, Missouri, to Port Chicago, California, for export. The defense requirement was for this shipment to move "intact" which is to say, departing on the same day and arriving on the same day. A further requirment was for arrival on or before 30 September 1968. No regulated carrier serving that base could provide the equipment needed and effect delivery within the required time. This shipment was delivered on 2 September 1968, within the requirement, by American Farm Lines;
2. On 3 May 1968, the DOD shipped special test items from Camden, Arkansas, to U.S. Army Proving Ground, Dugway, Utah. The defense requirement was for arrival before 7:00 A.M., 6 May 1968. American

Farm Lines delivered the shipment on 5 May 1968. The certificated carriers serving Camden to Dugway would have required three participating carriers, and, based upon our experience, would not have complied with the desired date of delivery;

3. American Farm Lines was called to deliver a shipment of Chemical Agent O and riot control agent from Fort Estill, Kentucky, to Travis Air Force Base, California, for airlift beyond. The requirement was for pickup on 3 October 1967, for connection with airlift no later than 7 October 1967. It was delivered 6 October 1967. American Farm Lines provides the only direct line service to our knowledge and, based upon our experience, the requirement could not have been met by interline carriers;

4. On 5 March 1968, "freight of all kinds" was picked up by American Farm Lines from Pine Bluff Arsenal, Arkansas, and delivered to Hill Air Force Base, Utah. The defense requirement was for delivery on 7 March 1968. It was delivered on that date for a two-day transit time. American Farm Lines provides the only direct service between these points. Our experience shows that no interline routing through certificated carriers could have effected delivery within the required time; and

5. On 20 April 1967, "freight of all kinds" was shipped from Edwardsville, Illinois, to Naval Weapons Station, Vallejo, California. The defense requirement was for delivery on Sunday, 23 April 1967, and was delivered on that date by American Farm Lines which provides the only direct line service between these points. Our experience shows that no interline carrier could have met the requirement.

Injunctions issued by the United States District Court for the Western District of Oklahoma now precludes American Farm Lines from rendering much of the completely flexible service previously provided. In addition, recently

enacted legislation will limit even more drastically the ability of American Farm Lines to provide fully flexible service in the future.

In the opinion of the DOD, grant of the authority sought by American Farm Lines would not adversely affect existing carriers to any material extent. Conversely, grant of its application for temporary authority would merely permit American Farm Lines to provide, on a certificated basis, the same service that it provided upon an "exempt" basis prior to 21 February 1968, and would be most beneficial to DOD in the discharge of its responsibility for conduct of the national defense.

As I have tried to make clear, the DOD has a substantial and continuing need for the service proposed in this proceeding. To this end it has already advised the Commission of its support for comparable permanent authority. In addition, this Commission is urged to promptly grant the instant application for temporary authority in order that the DOD can continue to receive the service that it was receiving prior to the injunction issued against American Farm Lines.

VERIFICATION

COUNTY OF ..... } ss:
STATE OF ..... }

Vincent F. Caputo, being duly sworn, deposes and says that he has read the foregoing statement and knows the content thereof; and that the same are true as stated.

.....
Vincent F. Caputo

Subscribed and sworn to before me, a notary public, in the county and state aforesaid, this.....day of..... 1968.

.....
Notary Public

My commission expires.....

BEFORE THE
INTERSTATE COMMERCE COMMISSION

DOCKET No. MC-129908 TA

AMERICAN FARM LINES

Statement of American Trucking Associations, Inc. in Response To Verified Statement Submitted by DoD

Comes now American Trucking Associations, Inc. (ATA), and files this statement in reply to the verified statement submitted by the Department of Defense (DoD) in support of the above-entitled application.

I

In its order entered herein on November 5, 1968, Division 1 provided that on or before November 20, 1968, applicant submit a verified statement from DoD specifying a need for the proposed service. Protestants, by virtue of an extension of time granted by the Commission, may submit verified statements in response to any statement submitted by applicant on or before December 13, 1968. Because of ATA's association status, we are unable literally to comply with the Commission's order by submitting verified statements setting forth affirmative evidence in reply to DoD's statement. Such evidence can be submitted only by protestant motor carriers. This statement is intended to deal primarily with the failure of DoD's verified statement to comply with the evidentiary requirements set forth in the Commission's order and, concomitantly, the failure of applicant to establish a need for the proposed service.

II

DoD's Verified Statement Does Not Specify the Commodities or Points for Which There Is an Immediate and Urgent Need for Applicant's Proposed Service

Between August 1, 1967 and June 30, 1968, DoD allegedly required service for the movement of approximately 1,457,064,000 pounds of traffic from points in the involved midwestern, southern and southwestern States to points in California, Arizona, Utah, Nevada, and Washington. Typical origins were represented as including three points in Kentucky, two points in Indiana, four points in Illinois, eight points in Missouri, a single point in Louisiana, four points in Arkansas, eight points in Kansas, and seven points in Oklahoma. Typical destinations to which that traffic moved consisted of 19 points in California, two points in Arizona, three points in Utah, two points in Nevada, and three points in Washington. During the same period, about 499,968,000 pounds of traffic moved in the reverse direction. Origins from which this traffic was transported included 30 points in California, seven points in Arizona, three points in Utah, two points in Nevada, and three points in Washington. The destinations to which this traffic moved were represented as including "virtually" all of the above-described points from which its westbound traffic originated, as well as some additional but unnamed points in the involved area. (pp. 2-5)[1]

The more than 1,900,000,000 pounds of traffic transported during the above-specified period allegedly included "thousands of different articles and commodities." (p. 5) The commodities were described as consisting of "numerous items falling within the definition of Class A and Class B explosives," and about 75 specified individual and class commodities, comprised primarily of military equipment and supplies. (pp. 5-6)

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[1] "P" refers to page of DoD's verified statement.

Presently, DoD's traffic is transported by rail, motor vehicle, and, in emergency situations, by aircraft. (p. 6) However, it is not clear what percentage of the traffic is moved by the various modes. It would appear that the sole concern of DoD in this proceeding refers to that portion of its traffic which requires "expeditious handling." (p. 6) Past experience with the use of air service on volume shipments has shown its cost to be prohibitive, and therefore, DoD believes that there is an imperative need for motor carriers capable of providing direct service with a minimum amount of transit time. (p. 6)

At the outset, we wish to point out that the Commission's order of November 5, 1968, requires that DoD's verified statement "specify the commodities and points between which there is an immediate and urgent need for applicant's proposed service which cannot be met by existing carriers." We submit that DoD's verified statement totally fails to set forth the specific evidence required by said order or the Commission's Temporary Authority Rules.

Although information has been supplied about traffic moving between various points in the involved territory over an 11-month period, DoD has indicated that only an unspecified portion of that traffic requires expeditious handling, which traffic apparently constitutes the basis of DoD's support of the instant application. Therefore, the Commission is still without any information as to the *volume* of traffic to which this application pertains. Also, while the verified statement sets forth a list of commodities which DoD transports, there is no specific indication of which commodities, if any, require expedited service. Additionally, even though typical points[2] in the involved territory are set forth, it is apparent that those

[2] We submit that even if it was demonstrated that service was needed between the typical origins and destinations listed by DoD in its statement, they would not comprise a representative number of points within the 14 States sought in this application, and, therefore, would not justify a grant of the broad territorial authority in this proceeding.

points refer to the origins and destinations of DoD's general traffic, and not solely to that portion of its traffic which allegedly needs expeditious service. Therefore, those points cannot be considered as evidence justifying the broad grant of authority sought herein.

In light of the foregoing, we submit that DoD has not provided specific information as to the commodities or points between which it has an immediate transportation need, as was required by the Commission's order, and, further, that the statement does not conform with the minimum evidentiary requirements as set forth in 49 C.F.R. § 1131.2(c).

III

DoD Has Failed To Demonstrate the Inadequacy of Existing Services

A. *It Has Not Been Shown That Existing Joint-Line Services Have Failed or Are Unable To Meet DoD's Transportation Needs*

DoD alleges that the "majority" of all certificated motor carrier service presently available to it is provided upon a joint-line basis, and that such service requires excessive transit times. (p. 7) Therefore, joint-line service is not considered responsive to its need for expedited handling of its traffic. However, in support of this generalized allegation, DoD cites only two instances of unsatisfactory service resulting from the use of unnamed joint-line carriers. The first relates to the movement of "some" shipments of Class A and Class B explosives moving from McAlester, Okla., to Bangor, Wash. The second complaint concerns the shipment of empty shell cases from San Jose, Calif., to Doyline, La. (pp. 9-10) In each instance joint-line service was deemed inadequate when compared to the expeditious service provided by *existing single-line carriers* operating between those points. Thus, even assuming, *arguendo,* that existing joint-line

service between the named points is unsatisfactory, it is apparent that satisfactory single-line service is available for those shipments.

It is also alleged that no single-line service is available to DoD from about 28 specified points to a number of destinations in the involved territory. (pp. 12-14) Nevertheless, DoD has not demonstrated that existing joint-line services between those points are unsatisfactory, or that any of its traffic between those points requires expeditious handling.

We do not believe that the generalized and indefinite complaints about the services of unnamed joint-line carriers could, under any stretch of the imagination, be considered material to the issue of the adequacy of those services. In fact, the Commission, in 49 C.F.R. § 1131.4 (b)(6), has provided:

> Generally, the desire of a shipper for single-line service in lieu of existing interchange or connecting-carrier service will not warrant a grant of temporary authority. *A grant of temporary authority to effectuate single-line service will be authorized only when it is clearly established that the carriers providing multiple-line service are not capable of, or have failed in, meeting the reasonable, immediate and urgent needs of shippers or receivers between the points or territories and in respect of the commodity or commodities involved.* (Emphasis supplied)

We submit that DoD's statement, without evidence of demonstrated service deficiencies, falls far short of *clearly establishing* that existing joint-line carriers are not capable of, or have failed in, meeting the reasonable, immediate and urgent needs of DoD. At most, its statement merely establishes that it has a preference for single-line service in lieu of existing joint-line service. The Temporary Authority Rules explicitly provide that such preference will not warrant a grant of temporary authority.

B. *Regular-Route Service Has Not Been Shown To Be Unresponsive to Shipper's Needs*

According to DoD, *virtually* all carriers presently providing service between points in the involved territory conduct regular-route operations. This service is deemed less desirable than irregular-route service because the former requires operation over prescribed routes which are often circuitous, whereas the latter enables the provision of service on a direct basis between various points. (pp. 7-8)

It is well settled that mere circuity, in and of itself, is no indication of the unsatisfactory nature of existing service, unless it is shown that the complained-of service is so unduly circuitous as to be inadequate to meet shipper's reasonable transportation needs. DoD's statement does not provide any information as to points between which the services of named regular-route carriers are so circuitous as to be inadequate. The only information provided raises a general complaint about regular-route service available between St. Louis, Mo. and points in California. DoO alleges that in some instances such service is provided on a joint-line basis whereas at other times a single-line service is provided. However, regardless of which of those services is available, DoD believes that irregular-route, single-line service would require about half of the transit time presently required by regular-route carriers. (p. 10) This unsupported and self-serving statement can hardly be considered indicative of any service deficiencies experienced by DoD between the above-described points.

Another aspect of regular-route service deemed inadequate is the use by some unidentified carriers of "single" drivers rather than "two-man driving teams." (p. 8) Supposedly, the single drivers operate through established relay points, and, therefore, the power units must be interchanged at various points. This results in "snags" due to the unavailability of power units or drivers. (p. 8)

Although the Temporary Authority Rules provide for the granting of temporary authority when existing authorized carriers are unable or refuse to furnish equipment in order to meet an immediate and urgent need (49 C.F.R. § 1131.4(b)(6)), this clearly is not the case here. DoD has not indicated a single carrier which has refused or was unable to furnish equipment when requested, nor have occasions been set forth on which connecting drivers could not be obtained. Thus, the "snags" alleged to exist when single drivers are used appear to have no basis in fact. Moreover, DoD has not even identified the carriers, if any, which utilize such operations.

C. *DoD Has Not Established That It Requires a Service Which Existing Services Cannot Collectively Provide*

DoD believes that a transportation system which is comprised of carriers holding "bits and pieces" of authority is inherently inefficient. (p. 10) It alleges that no carrier holds authority to provide the complete transportation service needed in the 14-State area. (pp. 10-12)

The Commission has prescribed definite standards which an applicant must meet in order to warrant a grant of temporary authority in the above-described circumstances. Section 1131.4(b)(5) of 49 C.F.R. provides:

> Requests for temporary authority on the basis of "providing a complete service to a shipper," even though existing carriers are participating in the traffic and in many instances can provide a substantial part of the service, require *special justification.* Generally, in such instances, the *applicant must establish with reasonable certainty that the existing carriers cannot adequate serve the shipper in their authorized territories,* or that the supporting shipper has revised its distribution methods to such an extent that there actually is an immediate and urgent need for the complete service proposed. (Emphasis supplied)

As has been pointed out above, DoD has not justified the scope of the commodities it allegedly requires nor the broad territory in which it seeks applicant's service. Also, it has not been shown that existing services are unable to meet any need which might exist. There are over 110 motor carriers offering a wide diversity of service protesting this application, and not one service failure has been attributed to any of those carriers in DoD's statement. Thus, we submit that there is no evidence of record which would establish with reasonable certainty that existing carriers cannot adequately serve the shipper in their authorized territories. The absence of such "special justification" precludes a grant of temporary authority in this proceeding.

IV

DoD's Verified Statement Does Not Establish an Immediate and Urgent Need for the Service Proposed

DoD premises its support of the instant application upon an alleged need for expedited service. It alleges that its efforts to secure the most efficient and economical transportation available is subverted by the unduly excessive transit times experienced with presently certificated carriers.

We submit that the foregoing allegations do not demonstrate the need required to be established in order to warrant a grant of temporary authority. As provided in section 1131.4(b)(2) of the Commission's Temporary Authority Rules:

> An immediate and urgent need justifying a grant of temporary authority will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service. Such a showing may involve a new or relocated plant, different method of distribution, new or unusual commodi-

ties, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to provide service, or comparable situations which require new motor carrier service before an application can be filed and processed.

We do not believe that any of the reasons set forth by DoD fall within the ambit of the situations which constitute the proper subject matter for a temporary authority application.

In effect, DoD urges that the Commission grant American Farm Lines the authority sought because such operation would ensure the movement of its traffic in the most efficient and economical manner possible. What it essentially seeks is an ideal transportation system wherein it has direct, single-line service for all of its commodities and between all of the points through which its traffic moves. Certainly, this is the situation every shipper desires. However, the realities of transportation and the diverse needs of thousands of shippers prevent the institution of such an impossible and impracticable system. DoD's alleged need for expedited service because of the "defense requirement"—whatever that vague term may mean—relies upon its unsupported allegations of the inadequacy of joint-line service, the need for a complete service, and the failure of "some" carriers to use two-man driving teams. As has been pointed out above, DoD has not complained of the services of identified carriers, protestants herein or not, or of specific instances in which the complained-of deficiencies resulted in service failures or delays. Moreover, it has not shown that any of the involved origins or destination do not have carrier service available, or that any carrier presently authorized to serve those points has failed to provide service. Therefore, we do not believe that DoD has demonstrated "an immediate and urgent need" for service as defined in 49 C.F.R. § 1131.4(b)(2).

Two aspects of DoD's alleged service problems require further comment. It is asserted that there is a need for expedited service in order to guarantee the coordination of the arrival of inbound shipments with the production schedules of various manufacturing facilities. (p. 15) These timed deliveries are needed at the Louisiana Ammunition Depot at Doyline, La. and the Pine Bluff Arsenal at Pine Bluff, Ark. as neither of these facilities warehouse some types of ammunition and the incoming shipments of empty shell cases are directly fed into the production lines from the delivering vehicle. (p. 16) Inbound shipments of shell cases from San Jose, Calif. to those facilities cannot be timed due to the transit times required by joint-line, regular-route carriers. Only one carrier allegedly provides satisfactory service between San Jose and Doyline at present, but that carrier does not have "the capacity to move the tremendous volume required." (p. 16)

Initially, we would point out that there is no evidence of record indicating the actual volume of traffic moving between San Jose and Doyline or Pine Bluff. Therefore, it has not been shown that the "one" carrier providing satisfactory service cannot handle all of the traffic involved. Also, DoD has previously indicated that there are *carriers* providing 72-hour, single-line service on shell cases from San Jose to Doyline. (pp. 9-10) No information has been provided as to late deliveries or other unsatisfactory service between San Jose and Pine Bluff. Thus, it does not appear that there is an concrete evidence tending to establish "an immediate and urgent need" for timed deliveries to Doyline or Pine Bluff, nor between any of the other points sought in the application.

Another "example" of unsatisfactory service involves the need for the timely delivery of shipments by common carriers to ports for ultimate delivery overseas. It is alleged that due to the failure of existing carriers to meet scheduled delivery times, shipments have not reached the

docks until after the ship has departed. This service failure has been encountered on movements from St. Louis, Mo. to San Francisco, Calif., and is attributed to the failure of presently authorized carriers to provide a three-day service. (p. 17) DoD's statement does not specify the frequency of these service failures, the carriers involved, nor the extent to which an "immediate and urgent need" exists for such service. It is well settled that a general allegation of the inadequacy of presently certificated carriers, without more, is not sufficient to warrant a grant of temporary authority.

The "desirability" of moving mixed shipments is also urged as a reason for granting this application. (p. 17) Such service allegedly is not now available because carriers holding general commodity authority do not also hold authority for the transportation of Classes A and B explosives. (p. 18) However, DoD has nowhere established that it requires the movement of "mixed" shipments between the points involved in this proceeding, or that existing carriers have specifically failed or been unable to provide such service when requested to do so. In the absence of such showing, the Temporary Authority Rules preclude the granting of this application. (49 C.F.R. § 1131.2(c))

Conclusion

DoD, despite its general allegations of unsatisfactory service throughout the involved territory, has not presented a scintilla of evidence demonstrating that it has an immediate transportation need for the proposed service, nor has it set forth concrete and specific examples establishing that identified existing services are inadequate in either their capacity or demonstrated ability to perform the services requested herein. Therefore, we submit that DoD's verified statement fails to set forth the information specifically required by the Commission's order of November

5, 1968, and does not comply with the minimum evidentiary requirements of the Temporary Authority Rules. For these reasons, we do not believe that applicant has established an immediate and urgent need for all or any part of the service proposed herein which cannot be met by existing services. Thus, we urge that, upon reconsideration, the application be denied.

Respectfully submitted,

AMERICAN TRUCKING ASSOCIATIONS, INC.

PETER T. BEARDSLEY
RICHARD A. MEHLEY
NELSON J. COONEY
JOHN R. BAGILEO
Attorneys

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC-129908 TA

In the Matter of the Application of:

AMERICAN FARM LINES

RESPONSE OF ASHWORTH TRANSFER, INC. TO VERIFIED STATEMENT OF VINCENT F. CAPUTO SERVED UNDER DATE OF NOVEMBER 20, 1968

INCLUDING:

(a) VERIFIED STATEMENT OF DONALD CULBERTSON ON BEHALF OF ASHWORTH TRANSFER, INC.

(b) ARGUMENT

KEITH E. TAYLOR and
GORDON L. ROBERTS
OF AND FOR
PARSONS, BEHLE, EVANS & LATIMER
520 Kearns Building
Salt Lake City, Utah, 84101

Attorneys for Protestant,
Ashworth Transfer, Inc.

Dated: December 11, 1968

Date Due: December 13, 1968

Ashworth Transfer, Inc., a Protestant in the above-captioned proceeding, herewith files its response to the Verified Statement filed by the Applicant under date of November 20, 1968.

Preliminary Statement

Protestant Ashworth has previously filed herein its protest against the grant of the instant application. It incorporates herein the statements contained in said protest.

Further, under date of November 21, 1968, Ashworth filed a Motion to Vacate the Order of the Commission,

through Division 1, of November 5, 1968 which allowed the filing of verified statements by the Department of Defense and by the various Protestants herein. By filing the instant response, including the Verified Statement contained herein, Protestant Ashworth does not waive or depart from the contentions made in its Motion to Vacate served under date of November 21, 1968. Nonetheless, since the Commission has not as yet ruled upon the motion of Ashworth to vacate or upon similar motions filed by other Protestants in this proceeding, and the due date for the instant pleading is now at hand, this pleading is filed with the reservation that it is still the contention of Protestant Ashworth that the proceeding is not properly constituted and not authorized by the applicable regulations and statutes pertaining to the Commission's jurisdiction and procedures in such matters.

Verified Statement of Donald H. Culbertson

1. My name is Donald H. Culbertson and I am employed by Protestant Ashworth Transfer, Inc. as Traffic Manager. As such, I have knowledge as to the facts stated in this Verified Statement and am authorized by Ashworth to make this statement on its behalf. I am familiar with the authority of the Company, its equipment, and its operations, including those of serving the Department of Defense in the transportation of explosives.

2. A copy of the operating authority of Ashworth and of Hawkes Transportation Co., Inc. were attached to the protest which we originally filed in this proceeding. Since that time, there has been one relevant change in such authority which should be noted: Pursuant to an order by the Commission in Docket No. MC-F-10100, control of Hawkes Transportation Co., Inc. by Ashworth has been authorized. As a result thereof, although no new Sub number has yet been issued, Ashworth is authorized to operate pursuant to the authority previously held by Hawkes Transportation Co., Inc. A copy of the Hawkes

authority was attached to the original protest filed herein by Ashworth and Hawkes jointly.

3. Ashworth has a tremendous interest in the instant application. During the period of the last two years approximately, Ashworth has become increasingly engaged in the transportation of explosives for the Department of Defense. As will be noted by reference to its authority, attached to the protest herein, Ashworth has been both specific explosives authority and authority to transport size and weight commodities. Many of the explosives transported by the Department of Defense can be moved under size and weight authority.

As set forth in the protest filed previously by Ashworth, a substantial portion of our participation in this traffic is in interline service. The interline nature of the explosives movements does not cause any delay whatsoever. The interline arrangements with connecting carriers are facilitated and expedited through modern communication techniques, the inspection time required at point of interchange is minimal, and we have had no complaints from the Department of Defense with respect to the interline nature of the moves in which we have participated. Much of the traffic with which we are involved is interchanged with connecting carriers at Denver. Such traffic would be from various of the states sought by the Applicant, including Indiana, Illinois, Louisiana and Kansas. Such traffic is destined to various points in Washington, California, Nevada and Arizona. From Denver, we can move the explosives to Washington in single-line service under the Ashworth-Hawkes authority combination. Traffic moving to California is interlined with various carriers with interchange points normally at Las Vegas, Wells or Reno, Nevada.

The interline connections do not require circuitous routing and, in fact, interchange is normally accomplished at some point along the most direct route between the point

of interchange at Denver and the place of delivery. We have previously listed numerous of the carriers with whom we interline this explosives traffic. I note that one carrier omitted from the protest was Wells Cargo, Inc. which is our connecting carrier for much of the traffic moving to points in California. As will be seen from a review of Ashworth's authority, it is irregular route authority with no restrictions which cause circuitous routings.

4. I have noted what the supporting shipper states with respect to its requirements for rushed service in order to meet departing ships from the West Coast. Ashworth has regularly been called upon by the Government to participate in movement of explosives to meet schedules such as these. It provides the equipment and service necessary to comply with the time limitations on such shipments. For example, it regularly utilizes two-man sleeper cab service to provide for the movement of vehicles without interruption and, as noted, it is authorized to travel over irregular routes. One recurring problem which is possibly the explanation for some of the problems mentioned by the supporting shipper is the fact that there has been and continues to be a tremendous delay in the unloading of movements of explosives at the destination points in such places as Port Chicago, California and Bangor, Washington. In the past several months, unloading time at these points of destination has been anywhere from five to seven, and in some instances, to ten days. This means that there is a substantial backup of loaded trailers, sitting at points of destination such as Port Chicago or Bangor which cannot be utilized until unloaded. At given times, we have had as many as from 40 to 60 forty-foot van trailers tied up because of such delay in unloading. Thus, no matter how expeditious the transportation services and transit time are, the effect of the same is lost because of the delay in unloading the trailers. We most emphatically submit, therefore, that the entrance of new carrier service will in no way remedy the problems which the Department of Defense alleges exist with respect to transit time.

5. Based upon my knowledge of Ashworth's operations and the operations of our interlining carriers and competing carriers in the field of the movement of explosives for the Department of Defense, I feel safe in stating that the common carriers, presently authorized, have promptly and efficiently responded to the needs of the Department of Defense in the movement of explosives in connection with the current effort in Southeast Asia. New equipment has been obtained by these carriers to facilitate and expedite such explosives traffic. For example, Ashworth alone has placed at least 20 new forty-foot van trailers in operation over the past several months, most of which are necessitated by and are being used in the transportation of explosives for the Department of Defense. A substantial portion of our business is presently devoted to the movement of explosives for the Department of Defense in areas which would be devoted by the grant of the instant application. The competition for this explosives traffic is presently very keen and we see no need whatsoever for the entrance of an additional carrier which, because of the broad scope of the rights which it seeks, would undoubtedly divert tremendous volumes of traffic from this Protestant and from other carriers.

6. Particularly do we feel this application should be denied inasmuch as the Department of Defense in its most recent support letter, and in the letter filed at the time of the original application by American Farm Lines, has not specified any specific failure on the part of this Protestant or other authorized carriers with respect to the movement of the subject commodities. It is my belief that the reason that there has been no such specification is that, in fact, this Protestant and other presently authorized carriers are efficiently and expeditiously meeting the needs of the Department of Defense in the movement of explosives.

/s/ Donald H. Culbertson
Donald H. Culbertson

STATE OF UTAH
County of Salt Lake } ss:

DONALD H. CULBERTSON, being first duly sworn, deposes and says: That he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

/s/ DONALD H. CULBERTSON
Donald H. Culbertson

Subscribed and sworn to before me this 11th day of December, 1968.

/s/ LANA A. ROGERS
Notary Public, residing at
Salt Lake City, Utah

My Commission Expires:
Nov. 5, 1971

Argument

Protestant Ashworth takes the further position that the verified statement filed on behalf of the Department of Defense, pursuant to the Order of November 5, 1968 of Division 1, even coupled with the data previously filed by the Department of Defense, is fatally deficient when compared to the requirements of the Commission's Regulations. Under Ex Parte No. 67, the Commission has required that statements in support of temporary authority applications must contain at least certain specific information. Several of the categories of required information, which have not been complied with by the Department of Defense in the instant case are:

a) The volume of traffic involved, frequency of movements, and how transported now and in the past.

b) Efforts which have been made to obtain the services from existing carriers.

c) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for their refusal.

d) Support of similar applications and the determination of such applications.

When the Department of Defense has failed, even after having been given a second opportunity, to comply with the regulations of this Commission, we submit that such is the best evidence of the lack of any real need for new carrier services herein. In view of the history of the instant application, and specifically the injunction which has been issued by the United States District Court for the District of Washington, we submit that compliance with the Commission's Regulations is mandatory and failure to comply with such Regulations is fatal to any application for temporary authority. No claim has been made by the Department of Defense that any of the requisite information was not forwarded for security reasons. Indeed, it would be frivolous to allege, for example, that the names and addresses of existing carriers who have failed to provide the service required would in any way be confidential for security reasons. The same is true as to the identity and discussion of other similar applications supported by the Department of Defense.

We would further note, in passing, that the supporting data filed by the Department of Defense seemingly ignores several other aspects of the Regulations pertaining to temporary authority. For example, the application seeks service to or from a number of states, without any concomitant proof as to movements between a representative number of points in said states. The support of the shipper is based largely upon the consideration of the preference of single-line over interline service which the Regulations specifically provide will not be considered as the grounds for a grant of temporary authority, at least in the absence of a specific showing that there is no available carrier service capable of meeting the reasonable needs of the shipper. The matter of expense so far as the present system is concerned as compared to that pro-

posed by Applicant is essentially irrelevant since no allegation has been made, and none could be sustained, that the present rate structure of Protestant or other carriers constitutes an embargo against the transportation of the subject commodities. Indeed, the tremendous volumes of explosives presently being moved within the requirements of the Department of Defense clearly demonstrates that there is no embargo whatsoever but, rather, a responsive effort on the part of presently authorized carriers to fulfill the reasonable needs of the Department of Defense.

WHEREFORE, Protestant Ashworth respectfully moves that the application should be denied. In so moving, however, Ashworth reserves the position stated in its Motion to Vacate, filed previously herein, to the effect that this proceeding is procedurally and jurisdictionally improper in its present context.

Respectfully submitted,

/s/ KEITH E. TAYLOR
Keith E. Taylor
/s/ GORDON L. ROBERTS
Gordon L. Roberts
of and for
PARSONS, BEHLE, EVANS & LATIMER
520 Kearns Building
Salt Lake City, Utah 84101
Attorneys for Protestant, Ashworth Transfer, Inc.

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. MC 129908 TA

AMERICAN FARM LINES

Reply of Bekins Van Lines Co., Capitol Truck Line, Inc., and Lyon Van Lines, Inc. to Applicant's Petition For Reconsideration

Come now Bekins Van Lines Co., Capitol Truck Line, Inc., and Lyon Van Lines, Inc., protestants herein, and for their reply to applicant's petition for reconsideration in the above-captioned application of the Order of the Commission, Temporary Authorities Board, dated July 12, 1968, denying said application, respectfully allege as follows:

By the above-captioned application temporary authority of 180 days' duration is sought to engage in the following transportation:

> "*General commodities including classes A and B explosives,* restricted to traffic moving on Government Bill of Lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, and Arizona."

Protestants timely filed their protest to this new service proposal and in the course thereof set forth their interest in said application as involving the transportation of household goods and so-called cryogenic liquids, throughout the proposed 13 state service territory. They expressed their position that in light of the present existence of their respective authorities, facilities and equipment, there exists no immediate or urgent need for the proposed new service, insofar as it would duplicate their own.

A reply was thereafter filed by applicant to such protest and to the protests of numerous additional carriers. No-

where within the contents of said reply or of the instant petition was there contained any expression of an attempted justification for the sought authority insofar as it embraces the two identified commodities of concern to these protestants and we respectfully submit that the Commission should infer therefrom that applicant has, in fact, abandoned its application insofar as the same embraces such commodities. Enforcing such position is the fact that applicant has now filed a permanent authority application wherein its general commodity transportation proposal is specifically restricted against the transportation of household goods and commodities in bulk.

Under the foregoing circumstances, protestants respectfully submit that applicant has in fact tacitedly admitted the lack of need for its proposed service insofar as the same embraces such commodities and accordingly the application at least to that extent should be summarily denied.

Respectfully submitted,

WARREN N. GROSSMAN
Warren N. Grossman

BEFORE THE INTERSTATE COMMERCE COMMISSION

DOCKET MC-129908, TA

AMERICAN FARM LINES TEMPORARY
AUTHORITY APPLICATION

STATE OF WASHINGTON
COUNTY OF KING } ss.

I, Forrest Arnold, being first duly sworn, depose on my oath and say:

I am Traffic Manager of Black Ball Freight Service, a protestant herein. I have personal knowledge of the following matters and things relating to the application.

That the fact hereinafter set forth are in addition to that contained in my company's protest to the application.

That for more than the past twenty-five years Black Ball Freight Service has participated in the transportation of general commodities, including Classes A and B explosives moving on Government bill of lading between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and on the other, points in Clallam, Jefferson, Kitsap and Mason Counties, Washington. That my company derives approximately 24 percent of its total revenue from interlining said traffic at Seattle or Tacoma, Washington. That during the past year my company interlined in excess of 62,000,000 pounds of traffic moving between the above described points on Government bills of lading. That such traffic is necessary for the maintenance of my company's operations in that during 1967 our operating ratio (percentage of total expenses to total revenue) was 94.8. That the exclusion of 24 percent of our total revenue would put our company in a loss position. That our participation in the subject traffic consists of being the delivering or originating carrier on traffic moving between points in Clallam, Jefferson, Kitsap and Mason Counties, Washington, and States enumerated above, with interline with other carriers at Seattle or Tacoma, Washington. The equipment of the connecting carrier moves through with our company performing the transportation service between the above-named Washington counties and the above-named States. Our participation in this service is, and has been, authorized by the certificate issued to us by the Interstate Commerce Commission in its Docket MC-7325 and Subs 3, 5, 6, 8 and 9 thereof.

The major theme of the verified statement of the Department of Defense is that it suffers because of failure of existing carriers to effect delivery on time. In other words, it claims unsatisfactory transit times. It recites no specific instance of a failure "to arrive at destination in time for the scheduled transshipment."

The facts are to the contrary. We checked our records for the past 12 months and were unable to find a single instance where we failed to make delivery on time at Bangor, Washington (or any other point which we are authorized to serve) on the subject traffic. To the contrary, we find that very frequently the equipment arrives at Bangor but cannot be unloaded because the vessel on which the shipment is to be loaded is still at sea. This is exemplified by "Appendix A" hereto attached and by this reference made a part hereof. This is a true copy of a record regularly kept by us on a daily basis. It covers all loads handled by our company and reflects the time the equipment was available for unloading at Bangor and the day on which it was actually loaded to the vessel.

It covers 26 shipments for the four-day period shown. It reflects the following periods of detention (when the equipment was available for unloading but not unloaded by the Government).

Number of Days	Detention Time
1	2
4	2
5	2
6	1
7	3
8	4
9	6
10	2
11	1
14	3

This adds up to 206 lost days on 26 loads or almost an average of 8 days per load. Although the carriers' equipment was out of service, the Government (the Department of Defense) paid nothing for the lost time.

.....

FORREST ARNOLD

STATE OF WASHINGTON }
COUNTY OF KING } ss.

I, Forrest Arnold, being first duly sworn, depose and say:

I have read the foregoing statement, know the contents thereof, and that the same are true as stated.

.....
FORREST ARNOLD

Subscribed and sworn to before me this 9th day of December, 1968.

.....
Notary Public for Washington
My Commission expires:

APPENDIX A

☐ BLACK BALL FREIGHT SERVICE ☐ BLACK BALL TRANSPORT, Inc.

HIGHWAY MANIFEST CARGO MANIFEST Date Unloaded Roger D. Fisher

	SHIPMENT	ORIGIN		DESTINATION SERVICE DATE	TIME	DATE	TIME
1	2778 Rio 2436	Crane		ATTN INSTALLATION 11/1	1530	11/9	0500
2	2979 CFW29 1886	Fallbrook		11/2	0730	11/16	0500
3	2980 Pit 50-1219	Cornhusker		11/2	0730	11/11	0910
4	2981 MB 70-170	Polaroon		11/2	1230	11/7	1400
5	2982 CFW29 1876	Fall Leaves		11/2	1230	11/16	1330
6	2983 CFW29 1649	"		11/2	1330	11/16	0915
7	2984 MB 70-307	Polaroon		11/3	1700	11/13	1200
8	2985 Pit 50-1275	Cornhusker		11/2	1625	11/10	2300
9	2986 TP 20-816	St Juliens Creek Va		11/2	1730	11/9	1100
10	2987 Pit 50-1104	Cornhusker		11/2	pm	11/11	1015
11	2988 Rio 3223	Crane		11/2	2145	11/12	1440
12	2989 Pit 50-1220	Cornhusker		11/2	2200	11/10	2315
13	2990 TP 20-30912	St Juliens Creek		11/2	2215	11/9	1630
14	2991 MB 2647	Polaroon		11/2	2300	11/7	2330
15	2992 Rio 3269	Crane		11/3	0400	11/12	1000
16	2993 Rio 3725	"		11/3	0400	11/12	1040
17	2994 Rio 3388	St Juliens Creek		11/3	0830	11/9	1300
18	2995 Rio 3341	Crane		11/3	1130	11/12	1445
19	2996 Rio 3465	"		11/3	1330	11/12	1220
20	2997 CFW 969-78	Mrs Alston		11/3	1530	11/14	1500
21	2998 Pit 50-1435	Cornhusker		11/3	1530	11/10	2120
22	2999 Imp 2939	Polaroon		11/3	1730	11/7	2330
23	3000 Imp 4645	"		11/3	1730	11/7	2330
24	3001 Imp 2755	"		11/3	2000	11/4	2300
25	3002 Rio 3032	St Juliens Creek		11/4	0230	11/12	1100
26	3003 Rio 3120	"		11/4	0230	11/14	1030
	TOTAL						

FORM 10 BBF

APPENDIX A

BEFORE THE INTERSTATE COMMERCE COMMISSION

DOCKET No. MC-129908 TA

AMERICAN FARM LINES

Reply Statement and Motion to Strike by Protestants Consolidated Copperstate Lines, Valley Motor Lines, Inc. and Western Gillette, Inc.

Comes now CONSOLIDATED COPPERSTATE LINES, VALLEY MOTOR LINES, INC., and WESTERN GILLETTE, INC. (hereinafter sometimes referred to as "Copperstate", "Valley" and "Western" and collectively as "protestants"), and respectfully file the within Reply Statement and Motion to Strike the Statement of Vincent F. Caputo of the Department of Defense.

PRELIMINARY STATEMENT

The within Reply Statement and Motion to Strike is filed without prejudice to the Motions now pending before this Commission in the within proceeding to strike applicant's Petition to Reopen and the Reply to Petitions for Reconsideration filed by the Department of Defense as well as the Motion to Vacate and Set Aside the Order of Division 1, dated November 5, 1968 Reopening the Proceeding. These motions filed by the within protestants, along with similar motions filed by other protestants, remain pending. The basis for the motions and grounds thereof is specifically set forth in the pleadings and as such no worthwhile purpose would be served by repeating all of this information herein.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC-129908 TA

AMERICAN FARM LINES

Verified Statement of
F. S. KOHLES
CONSOLIDATED COPPERSTATE LINES

AND

VALLEY MOTOR LINES, INC.

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

F. S. Kohles, being first duly sworn, deposes and says:

My name is F. S. Kohles. My business address is 1220 West Washington Boulevard, Montebello, California, 90640. I am General Traffic Manager and am authorized to testify in this proceeding. I have been so employed since 1956. I am familiar with the operating authority and actual operations of Consolidated Copperstate Lines and Valley Motor Lines, Inc.

Consolidated Copperstate Lines is a common carrier of general commodities operating under certificates of public convenience and necessity issued in Docket No. MC-22167, and Valley Motor Lines, Inc. under Docket No. MC-936. Consolidated Copperstate Lines holds authority between Southern California and Texas with a pending application to purchase additional operating authority into Louisiana. Consolidated Copperstate Lines also provides service in the State of Arizona, New Mexico and Utah. Valley Motor Lines, Inc. serves points between Southern California and north to Seattle, Washington. Valley Motor Lines, Inc. is a wholly owned subsidiary of Consolidated Copperstate Lines and unified operations are conducted the equivalent of a single line service. Consolidated Copperstate

Lines and Valley Motor Lines, Inc. will be hereinafter referred to as Valley-Copperstate. The available service was set forth in the letters of protest and will not be repeated.

Valley-Copperstate transports traffic on government bills of lading, including the Department of Defense. This traffic constitutes a significant portion of our overall tonnage and revenue and is considered valuable traffic. Such traffic is handled throughout the system within the scope of the certificates and in addition handles traffic on a joint line basis either as origin carriers, destination or bridge carriers. By and large rates and routes are now in effect between all points where we can participate in the traffic. However, additional rates and routes would be established on request therefor, to the extent not already covered. In providing such service delays are encountered from time to time due to congestion of equipment at some destinations.

I have read the Statement of Mr. Caputo and find that the same is so vague that specific response is difficult. However, Valley-Copperstate serves many of the points of origin and destination referred to in the Statement. Among other points Consolidated Copperstate Lines serves is between Yuma, Arizona and Amarillo, Texas. In addition Valley-Copperstate serves the following points of origin or destination referred to on pages 4 and 5: Amarillo, Dallas, Ft. Worth, Texas; Port Chicago, Seal Beach, Fairfield, Merced, Vallejo, Sacramento, City of Industry, Oakland, Concord, Chico, Lathrop, Susanville, Richmond, El Segundo, San Bernardino, La Mirada, San Jose, Santa Clara, Vernon, El Monte, Burbank, Long Beach, National City, Marysville, Lyoth, Stockton, California; Bellemont, Yuma, Litchfield Park, Flagstaff, Phoenix, Tucson, Glendale, Arizona; Salt Lake City, Utah; and Tacoma, Washington.

Valley-Copperstate stands ready, willing and able to continue to provide service for the Department of Defense,

among other governmental agencies, and requests that the application be denied.

F. S. KOHLES
F. S. Kohles
General Traffic Manager
CONSOLIDATED COPPERSTATE LINES
and VALLEY MOTOR LINES, INC.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.

F. S. Kohles, being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

F. S. KOHLES
F. S. Kohles

Subscribed and sworn to before me this 11th day of December, 1968.

JOSEPH D. EBERSOLE
Joseph D. Ebersole

(SEAL)

Notary Public in and for the County of Los Angeles, State of California.

(My Commission expires: September 15, 1969.)

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC-129908 TA

AMERICAN FARM LINES

Verified Statement of
CHARLES CARBONARO
Western Gillette, Inc.

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

Charles Carbonaro, being first duly sworn, deposes and says:

My name is Charles Carbonaro. My business address is 2550 East 28th Street, Los Angeles, California, 90058. I have been employed by Western Gillette, Inc. since November, 1946, and have been Traffic Manager for the last five years. In the course of my duties with Western Gillette, Inc. I have become familiar with the operating authority, equipment, facilities and actual operations of Western Gillette, Inc. (hereinafter sometimes referred to as Western).

Western conducts operations as a common carrier of general commodities with certain exceptions pursuant to authority granted to it in Docket No. MC-8948 and related subs. Generally speaking this authority extends from California on the west, extending the length of the State between San Francisco and the border of the Republic of Mexico, and east to Chicago, Illinois, including service in the States of California, Arizona, Nevada, Texas, New Mexico, Oklahoma, Kansas, Missouri, Illinois, Arkansas and Tennessee. The services of Western, along with a copy of its certificates, were set forth in the letters of protest filed on its behalf in this proceeding.

I have read the statement of Mr. Caputo and find no specific references to Western. Western holds authority

to serve a number of the specific points referred to in this statement including the following points of origin or destination, Seal Beach, Fairfield, Merced, China Lake, Vallejo, Sacramento, City of Industry. Oakland, Lathrop, Fallbrook, Camp Pendleton, San Diego, Los Angeles, Oakland, Richmond, El Segundo, San Bernardino, La Mirada, San Jose, Santa Clara, Vernon, El Monte, Culver City, Burbank, Long Beach, National City, Oceanside and Stockton, California; Litchfield Park, Yuma, Flagstaff, Phoenix, Goodyear, Tucson and Glendale, Arizona; McAlester, Oklahoma City, and Tulsa, Oklahoma; St. Louis, Missouri and Fort Worth, Dallas, Carrollton and Garland, Texas.

Western has heretofore transported a large volume of traffic for the Department of Defense. This traffic is considered to be desirable traffic. As an indication of the volume of traffic transported by Western for the United States, a recap of the tonnage and revenues derived therefrom is set forth below for the period October 1967 through 1968. These figures were taken from the books and records of Western.

1967	Revenue	1967	Weight (lbs.)
October	$ 337,929.95	October	9,281,968
November	299,905.91	November	10,192,747
December	336,477.18	December	9,157,020
1968	**Revenue**	**1968**	**Weight (lbs.)**
January	$ 281,304.00	January	8,154,724
February	241,309.33	February	7,331,376
March	373,206.74	March	10,014,527
April	333,395.60	April	8,842,047
May	434,488.89	May	11,859,335
June	96,464.51	June	10,183,203
July	267,105.84	July	7,755,647
August	310,644.14	August	8,164,860
September	303,401.73	September	8,680,745
October	350,181.94	October	10,385,031
TOTAL	$3,965,815.76		120,003,230

As an indication of the volume of traffic having origin or destination within the scope of this application the books and records of Western Gillette, Inc. show the following volume of traffic transported during the month of October 1968, having origin or destination in the States of Arizona and California.

	Arizona	California
Weight	1,135,403 (lbs.)	7,262,186 (lbs.)
Revenue	$43,796.82	$285,651.15

In order to provide service for the Department of Defense, Western publishes routes and rates between points served direct and in addition participates in joint routings with numerous other carriers to the full extent of its authority. From time to time it is the experience of Western that delays are encountered at destinations due to congestion of traffic tying up men and equipment for various periods of time. Western stands ready, willing and able to continue to provide service to the Department of Defense and Western is desirous of continued participation in this valuable traffic. Such traffic is valuable to Western in the conduct of its overall operations. Any diversion of this traffic would be of serious concern to Western as the operating ratio for the year 1967 was 100.7. The ratio for the first quarter of 1968 was 102.7 and 98.9 for the second quarter, 1968.

Western respectfully requests that the application of American Farm Lines be denied.

CHARLES CARBONARO
Charles Carbonaro
Traffic Manager
WESTERN GILLETTE, INC.

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

Charles Carbonaro, being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

CHARLES CARBONARO
Charles Carbonaro

Subscribed and sworn to before me this 11th day of December, 1968.

JOSEPH D. EBERSOLE
Joseph D. Ebersole

(SEAL)

Notary Public in and for the County of Los Angeles, State of California.

(My Commission expires: September 15, 1969.)

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC-129908 TA

AMERICAN FARM LINES

Motion To Strike

Part II

Motion To Strike

The within protestants move to strike the entire Verified Statement filed by Mr. Vincent F. Caputo, Director of Transportation and Warehousing, Department of Defense, service date November 20, 1968, and filed in the within proceeding. The copy of the statement served on the parties has not been conformed to show the actual date of verification.

The basis for this Motion to Strike is that the Statement does not conform to the Commission's Rules with respect to supporting statements to be submitted with temporary authority applications as set forth in the Commission's "Special Procedures for Motor Temporary Authority". Among other things these rules provide as follows with respect to the content of statements filed in support of applications.

"(c) *Supporting statements.* Each application for temporary authority must be accompanied by a supporting statement(s) designed to establish an immediate and urgent need for service which cannot be met by existing carriers, except that when the Department of Defense is the shipper such support may be furnished directly to the Temporary Authorities Board by the Washington office of that Department. Each such shipper's statement, except those submitted by the Department of Defense must contain a certification of its accuracy and must be signed by the person (or an authorized representative thereof) having such immediate and urgent need for motor carrier service. Any such supporting statement must contain at least the following information:

(1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved).

(2) Points or areas to, from, or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested).

(3) Volume of traffic involved, frequency of movement, and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue, and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.

(10) Name and address of motor carrier who will provide service and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's name, address and motor carrier docket number, if known, and state whether such application was granted or denied and the date."

The statement which is the subject matter of this motion does not conform to the context or spirit of the above requirements of this Commission and the same should be stricken. The statement at best is deceptive in that only total tonnage figures are given without attempt to differentiate between rail and truck shipments.

The statement does not attempt to list the specific categories of commodities to be transported, and the tonnage related thereto, even by such broad classifications as household goods, explosives, commodities, in bulk, in tank trucks, or other types of freight. No breakdown is set forth between less than truckload and truckload shipments. While the statement is replete with references to numerous points and places there is no information as to the actual volume of traffic to be transported by motor vehicle to and from the points as pertinent to this application. In fact the statement does not even provide information as to the total amount of freight to be moved by motor vehicle in the area of the application.

As noted above the tonnage compilations set forth in the statement are total figures without differentiation as to quantities moving by rail and motor vehicle. No indication is given as to the frequency of movement between the various points referred to or how the traffic was transported in the past or is being transported at the present time.

Other basic requirements have also not been complied with. For example, there is no statement as to efforts made to secure service from presently authorized motor carriers or service complaints with respect to existing carriers. The testimony is lacking in a definite statement as to the consequences of a denial of the application. The entire verified statement makes no reference as to the total amount of traffic transported by American Farm Lines in the past, or that could be transported under the exemption provided for cooperative associations in the Interstate Commerce Act, as amended. Without very detailed explanations of the services that applicant could render pursuant to the existing exemption there can be no finding of a need for additional service. References have also been made to the past services provided by American Farm Lines. Of course such references cannot be used

in support of the application unless facts are first set forth that all the transportation services were lawful in all respects, *Lynden Transfer* v. *U. S.*, 263 F. Supp. 336, Aff. 19 L. Ed. 2d, 655. It will be noted that the tonnage figures set forth in the statement date back to 1966, page 19. It will also be noted that the statement to which this motion is directed is inconsistent with the Reply to Petitions for Reconsideration, submitted on behalf of Department of Defense by the Department of the Army. The substance of that statement was alleged savings in freight charges.

Specific portions of the verified statement to which this motion is directed will be discussed below.

1. The statements with respect to the volume of traffic, origins and destinations appearing on pages 2 through 6.

These statements are irrelevant and immaterial to the issues as well as not being in compliance with the Commission's Special Rules with respect to supporting statements for temporary authority. Information is not set forth as to the volume of traffic as may move by rail or truck. No information is given with respect to the volume of traffic that might move by truck to and from the specific locations named as pertinent to this proceeding.

2. The statements with respect to the services of existing carriers appearing on pages 6 through 15.

No foundation is set forth that the general testimony with respect to existing services is within the personal knowledge of the witness and as such the same should be stricken as hearsay evidence. There is also no underlying foundation evidence that timed delivery is required for delivery of all shipments or testimony as to attempts to route such shipments via available single line services. The testimony should be stricken for the reason the same is immaterial and not in conformity

with the Commission's Special Rules as set forth hereinabove, and in particular paragraphs 7 and 8 above. The testimony is also inconsistent with the testimony appearing in paragraphs 1, 2 and 3, pages 9 and 10, wherein it is admitted that single line service is in fact available for each of the movements cited.

The testimony on pages 11 through 15 is wholly irrelevant to the issues presented under Section 210(a) of the Act. There is no evidence of actual movements between the specific points listed, frequency of such movements as may have been made in the past or planned for the future.

At page 11 the testimony simply states that there is no carrier authorized to provide service on all possible commodities over the entire scope of the application. Such testimony is totally irrelevant, and immaterial. The only relevant testimony would be specific testimony with respect to specific points supporting by all pertinent supporting statements. The only possible relevancy of the territory wide authority would be for shipments requiring split pickups or deliveries and there is no allegation that the same is here involved.

It is also stated that the use of currently authorized carriers results in higher costs to the taxpayers. This statement must be stricken for the reason there is no underlying evidence in support of this contention. The statements appearing on page 15, second paragraph, are mere conclusions and must be stricken as such.

3. The testimony appearing on pages 16-19 with respect to the services of existing carriers and needs for timed deliveries.

These statements must be stricken for the reason the same are not in conformity with the Special Rules of this Commission. The statements are mere conclusions without underlying specific evidence.

WHEREFORE, the within protestants request that the Commission issue its order striking the verified statement filed in the within proceeding.

Respectfully submitted,

By CARL H. FRITZE
Carl H. Fritze

Of Counsel:

RUSSELL & SCHUREMAN
1545 Wilshire Boulevard
Los Angeles, California 90017

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC-129908 TA

AMERICAN FARM LINES

TEMPORARY AUTHORITY APPLICATION

Verified Statement of
Consolidated Freightways Corporation of Delaware

WILLIAM B. ADAMS
624 Pacific Building
Portland, Oregon 97204
Attorney for Protestant
Consolidated Freightways
Corporation of Delaware.

Dated: December 11, 1968

Due: December 13, 1968

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC-129908 TA

AMERICAN FARM LINES

TEMPORARY AUTHORITY

STATE OF OREGON
COUNTY OF MULTNOMAH } ss.

Verified Statement of Edward V. Taylor

I, Edward V. Taylor, being first duly sworn, depose on my oath and say:

I am Director, Western Traffic Service, of Consolidated Freightways Corporation of Delaware, P. O. Box 3062, Portland, Oregon 97208. I have personal knowledge of the following matters and things relating to the application.

The primary representation of the Department of Defense is that transit times are not met by the existing carriers so that proper trans-shipment can be made. We have searched our records since January 1, 1968 and cannot find any instance on which we have failed to achieve the required time to meet the trans-shipment vessel.

On the contrary, our equipment is, as a general practice, detained at the trans-shipment point to await the arrival of the trans-shipment carrier. For example, Black Ball Freight Service conducted a study of trailers available for unloading during the first four days of November, 1968. During that period our company interlined with Black Ball Freight Service near Tacoma, Washington six shipments destined for Bangor, Washington. All of these shipments arrived in Bangor, Washington for trans-shipment to vessels prior to the date the vessel was available for loading. These six shipments were detained, awaiting unloading, a total of 59 days, or an average of almost 10 days per shipment. This is typical of the delays our equipment experiences at Bangor. We also experience similar delays at Concord, California. As a further ex-

ample, on December 11, 1968, we had 28 trailers available for unloading at Bangor. Of these, 13 had been available for unloading at Bangor for an average of more than 7 days. These trailers were not interlined with Black Ball Freight Service, but were moved under our own authority to Bangor, operated by teams in sleeper cabs.

We transport millions of pounds of traffic for the Department of Defense to these ports. We have done this for many years. During the past there have been a few (and a very few) occasions where because of breakdowns of equipment, or other factors beyond our control, when we have been a few hours late.

On the other hand, when our equipment is utilized for storage awaiting trans-shipment to vessels, we do not receive compensation for the detention, but also are prevented from making our equipment available for any additional service. It is a substantial economic waste. This is not offered as a criticism of the Department of Defense as we know it has problems, but merely to point out that in the vast majority of instances the required delivery times are met.

.....
Edward V. Taylor

STATE OF OREGON
COUNTY OF MULTNOMAH } ss.

I, Edward V. Taylor, being first duly sworn, depose on my oath and say: I have read the foregoing statement, know the contents thereof, and that the same are true as stated.

.....
Edward V. Taylor

Subscribed and sworn to before me this 11th day of December, 1968.

.....
Notary Public for Oregon

My Commission Expires:
.....

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC-129908 TA

AMERICAN FARM LINES
TEMPORARY AUTHORITY APPLICATION

Verified Statement of Robert O. Homberger

I am Robert O. Homberger, Vice President—Traffic for Dealers Transit, Inc., located at 7701 South Lawndale Avenue, Chicago, Illinois 60652.

Dealers Transit, Inc., hereinafter referred to as "Dealers", originally filed a protest in this matter dated June 6, 1968, which clearly stated Dealers' position, which position has not changed since that time. A copy of that original protest is attached hereto as Appendix "A". The instant verified statement is made by myself in reply to the statement filed by American Farm Lines, applicant, of Vincent F. Caputo, Director for Transportation and Warehousing Policy of the Department of Defense. That statement was filed by applicant pursuant to the order of the Commission served November 5, 1968, which reopened this matter for the receipt of further evidence.

Dealers is a motor vehicle transporter (including trailers) and a heavy hauler operating under Certificates No. MC-4405 and subs thereunder. Dealers originally protested this application because of the wide territorial scope involved and the completely unrestricted nature of the commodity descriptions which were requested. As this case has developed and particularly after the receipt of the statement of Vincent F. Caputo, it seems to become clear that the Department of Defense is here interested in the transportation of explosives and general commodities as the term is normally used, and not in the transportation of automobiles, trucks, trailers, or items which because of their size or weight require special handling.

On the other hand, while it does not appear that the latest statement of the Department of Defense cites any need for additional service in connection with those latter named commodities, the applicant has not offered to restrict against the transportation of those commodities. I can only assume, however, that Mr. Caputo is not speaking, in his statement, of automobiles, trucks, trailers, or items which because of their size or weight require special handling, because nothing in his statement relates to such items. All of the statements which he makes relate either to Class A and B explosives or to general commodities as that term is generally used. I have been over the statement of Mr. Caputo completely, and find that he speaks of Class A and B explosives, general commodities, or freight all kinds, in all instances except where specific commodities are enumerated on pages 5, 6, 9 and 20 of his statement. In none of these listings does he make any mention of automobiles, trucks, trailers, or items which because of size or weight require special handling.

Mr. Caputo's chief complaint seems to be with relation to interline service. He alleges that he is unable to get single line service between the states which are involved in this application. This is another reason why I believe that the commodities in which Dealers has an interest are not involved. If they were, Mr. Caputo, with the vast resources at his command, would surely know that Dealers possesses single line authority for a substantial part of the movements that he describes insofar as those commodities are concerned. For one thing, Dealers has authority to move trailers in secondary movements between all points and places in the 48 states. If the Defense Department had any trailers to move, there could certainly be no question as to Dealers' ability to do so in single line service. Dealers also has initial authority for trailers throughout much of the area here involved.

Insofar as commodities which because of size or weight require special handling, Dealers can also provide much

of the direct line service that would be involved, assuming that the Department of Defense was looking for available transportation on such items. Under its Subs 391, 353 and 400, Dealers can render single line service between Kentucky, Indiana, Arkansas, on the one hand, and California, Arizona and Nevada, on the other. Under its Subs 384, 353 and 400, Dealers can render single line service between Oklahoma, Missouri, and Kansas, on the one hand, and, California, Arizona, and Nevada, on the other. Under its Subs 353 and 400, Dealers can render single line service between Texas and Louisiana, on the one hand, and, California, Arizona and Nevada, on the other.

The only two destination states which Dealers presently cannot service in single line service and which are involved in this application are the states of Washington and Utah. Dealers presently has in process before the Commission an application to serve both of those states in its Sub No. 450. It is interesting to note that the Department of Defense did not seek to become involved in that hearing on behalf of Dealers, which it would seem it would most certainly have done if it had been in any dire straits with respect to the transportation of size and weight articles.

In addition, our Sub No. 389 provides authority for the movement of cargo containers from Fort Wayne, Indiana, Fresno, Vina Vista and Fremont, California, Gregg County, Texas and Springfield, Missouri. Our Sub No. 336 provides authority on road construction machinery from Evansville, Indiana, and our Sub No. 419 provides authority on the movement of bodies, refuse containers, hydraulic hoists, lift gates, from Bryan County, Oklahoma.

None of the commodities which I have discussed above have been mentioned in the supporting statement of the Department of Defense. There is no question, however, that such commodities are moving via Dealers. I estimate that within the scope of the instant application, Dealers

is moving $2,500,000 worth of such traffic annually, and that over 50% of it is moving on government bills of lading.

A number of things appear to be obvious. First of all, the Defense Department is moving a substantial amount of traffic by Dealers Transit, Inc. within the involved territory. Since none of these commodities have been specifically named in the statement of Mr. Caputo, it would follow that he has no complaint with the manner in which these commodities have been moved. Secondly, since the chief complaint of Mr. Caputo revolves about the alleged lack of single line service, and the resultant use of interline service, it would further appear that he is not talking about the type items which are embraced in Dealers' certificates because, as I have shown, Dealers has authority to provide single line service in all 48 states as to certain commodities, and can provide single line service in the bulk of the territory involved in this application on size and weight commodities. As a consequence, it would follow that Mr. Caputo is not speaking of these kinds of items in his statement, but is speaking rather of Class A and explosives and of general commodities as that term is ordinarily used.

If the certificate which is ultimately issued to American Farm Lines by virtue of this application, if any, is restricted against the transportation of automobiles, trucks, trailers, and items which because of size or weight require special handling, the interests of Dealers in this application would be removed. The insertion of such a restriction in any certificate which may be issued is completely warranted for the reasons herein stated, and it is my request that the Commission so restrict any certificate which it may see fit to grant to the applicant pursuant to the reopened hearing in this matter.

ROBERT O. HOMBERGER
Robert O. Homberger

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

Personally appeared before me, a Notary Public in and for the State and County aforesaid, on this —— day of December, 1968, ROBERT O. HOMBERGER, known to me to be the Vice President—Traffic of Dealers Transit, Inc., who, after being duly sworn by me, did state that the foregoing is his statement and that the facts contained therein are true and correct to the best of his knowledge, information and belief.

LUCILLE M. MCCUE
Notary Public in and for the
State of Illinois, County of Cook

(SEAL)

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC-129908 TA

IN THE MATTER OF THE APPLICATION OF
AMERICAN FARM LINES

Response of East Texas Motor Freight Lines, Inc., to Verified Statement of Vincent F. Caputo

EAST TEXAS MOTOR FREIGHT LINES, INC., hereinafter referred to as East Texas, a protestant in the above proceeding, files this response to the Verified Statement of Vincent F. Caputo dated November 20, 1968.

I.

By application filed May 17, 1968 and published in the Federal Register of June 8, 1968, page 8523, American Farm Lines seeks authority to operate as a common carrier by

motor vehicle over irregular routes transporting the following:

> General commodities, including Classes A and B explosives, restricted to traffic moving on Government Bills of Lading
>
> > Between points in Arkansas, Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, Oklahoma and Texas, on the one hand, and on the other, points in Arizona, California, Nevada, Utah and Washington.

East Texas filed a timely protest on July 12, 1968. The Temporary Authorities Board denied the application. After the filing of applicant's Petition for Reconsideration and a timely reply thereto by East Texas, Division 1, acting as an Appellate Division, on September 3, 1968, vacated and set aside the Temporary Authorities Board's July 12, 1968 order and granted temporary authority for a ninety-day period. By order dated November 5, 1968, the Commission, Division 1, acting as an Appellate Division, reopened the proceeding on its own motion, for the submission of a verified statement by applicant and any response which might be filed by protestants. This statement is submitted as a response as provided in that order.

II.

Reaffirmation of the Position of Protestant East Texas Motor Freight Lines, Inc.

East Texas reaffirms its interest in the application and its position stated in previously filed pleadings herein, including the facts and circumstances set out in its original protest dated June 19, 1968, which is already a part of the record. The operating authority issued to East Texas by the Commission is set out in National Motor Freight Traffic Association Tariff S-1, MF-I.C.C. No. S-1, National

Directory of Operating Rights, Sec. 041432 original pages 1 through 6 and third revised pages 7 and 8.

III.

Verified Statement of Vincent F. Caputo Is Not in Compliance With the Commission Rules Pertaining to Temporary Authority

The I.C.C. Rules and Regulations, 49 CFR Sec. 1131.2 (Filing of Applications for Temporary Authority) concerning supporting statements enumerate eleven specific items which must be contained in *any* supporting statement. The supporting statement to which this reply is directed fails to comply with these mandatory requirements. No attempt whatever is made to answer 49 CFR Sec. 1131.2(c)(3) and (8) which require information concerning the past transportation of the traffic involved and the efforts which have been made to obtain service from existing motor, rail or water carriers, and the dates and results of such efforts.

IV.

The Verified Statement of Vincent F. Caputo Will Not Support the Findings Required for a Grant of Temporary Authority.

The above mentioned statement is so vague and in such general terms that it cannot support a finding "that there is an immediate and urgent need for the motor carrier service here involved, and that there is no motor carrier service capable of meeting such need." However, throughout the entire statement the presence of existing service is clearly shown. At page 9 the witness makes this statement: ". . . the one carrier now holding a certificate authorizing it to provide a single-line service for movement of such shipments on an irregular route basis consistently effects 'third morning' delivery at Bangor, Washington." Also at page 9: ". . . delivery is made within 72 hours

after dispatch of the shipment from San Jose, Calif. when service is provided on a single-line basis by carriers using 2-man driving teams." At page 10: "In some instances service is available from (regular route carriers) on a single-line basis, while in other instances the only service available is that on a 'joint-line' basis."

Further, the volume figures given at pages 5 and 9 of the statement show extensive service presently available. When converted to a similar basis at 1½ years coverage, simple computation shows that of a total of some 3,109,090,908 (172,727,272 pounds per month) transported during the period 12/31/66 to 6/30/68, American Farm Lines transported 74,155,685 pounds or approximately only 2.4% of the traffic involved. While on the other hand existing common carrier service transported approximately 97.6% of the traffic involved, or some 3,034,935,223 pounds in the same period. Nothing can more emphatically illustrate the existence of a vast amount of common carrier service presently available to the supporting shipper than applicant's own statement showing transportation by existing carriers of in excess of *3 billion* pounds of freight. Certainly the finding that there is no motor carrier service available capable of meeting the needs of the supporting shipper herein cannot be found in the face of these figures and without such a finding there is no basis for Section 210a(a) temporary authority.

V.

Desire for Single Line Service Will Not Justify the Issuance of Temporary Authority.

The Commission's Rules at 49 CFR Sec. 1131.4(4) provide that desire for single line service will not justify the issuance of temporary authority unless it is clearly established that existing carriers are unable to provide service which meets the reasonable immediate and urgent need of the supporting shipper. It is apparent from the state-

ment of Mr. Caputo that this temporary authority application is one seeking to inject one more common carrier into an area where a plethora of common carrier service, both direct and interline, is presently available to the Department of Defense. This is no basis for a grant of temporary authority.

Applicant herein has not established the legal prerequisites for temporary authority under Section 210a(a), namely, (1) that there exists an immediate and urgent need for any of the proposed service and (2) that there is no carrier service capable of meeting such a need.

Therefore, protestant urges that upon reconsideration this application should be denied.

Respectfully submitted,

EAST TEXAS MOTOR FREIGHT LINES, INC.
A. DOYLE CLOUD, JR.
2355 Stemmons Freeway
P. O. Box 10125
Dallas, Texas 75207
Its Attorney

December 10, 1968.

BEFORE THE INTERSTATE COMMERCE COMMISSION

DOCKET MC-129908, TA

AMERICAN FARM LINES TEMPORARY AUTHORITY APPLICATION

STATE OF WASHINGTON }
COUNTY OF KING } ss.

Verified Statement of Wayne S. Green

I, WAYNE S. GREEN, being first duly sworn, depose on my oath and say:

I am Director of Commerce of Garrett Freightlines, Inc., a protestant herein. I have personal knowledge of the following matters and things relating to the application.

That the facts hereinafter set forth are in addition to that contained in my company's protest to the application.

That for more than the past twenty-five years Garrett has participated in the transportation of general commodities, including Classes A and B explosives moving on Government bill of lading between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and on the other, points in western states which it is authorized to serve. That in the year 1967, my company derived, in excess, 13 percent of its total revenue from the transportation of traffic moving on Government Bills of Lading. The revenue derived from that traffic in 1967 was $6,140,111.86. That such traffic is necessary for the maintenance of my company's operations in that during 1967 our operating ratio (percentage of total expenses to total revenue) was 94.1. That the exclusion of 13 percent of our total revenue would put our company in a loss position. That our participation in the subject traffic consists of being the delivering, originating, or bridge carrier on traffic moving between points in eleven western states, and states enumerated

above, with interline with other carriers at Denver, Colorado; St. Paul, Minnesota; or Albuquerque, New Mexico. The equipment of the connecting carrier moves through with our company performing the transportation service between the above named western states and the above-named eastern states. Our participation in this service is, and has been, authorized by the certificate issued to us by the Interstate Commerce Commission in its Docket MC-263 and outstanding subs.

The major theme of the verified statement of the Department of Defense is that it suffers because of failure of existing carriers to effect delivery on time. In other words, it claims unsatisfactory transit times. It recites no specific instance of a failure "to arrive at destination in time for the scheduled trans-shipment."

The facts are to the contrary. We checked our records for the past 12 months and were unable to find a single instance where we failed to make delivery on time at either Port Chicago, California or to our connecting carrier, Black Ball Freight Service at Seattle or Tacoma, Washington or traffic destined to Bangor, Washington. To the contrary, we find that very frequently the equipment arrives at Bangor but cannot be unloaded because the vessel on which the shipment is to be loaded is still at sea. We adopt the statement of Black Ball Freight Service and the information contained in Appendix "A" attached thereto so far as Garrett trailers are concerned. We also attach a copy of the Black Ball Appendix "A" hereto. The Garrett trailers are listed on line numbers 1, 11, 15, 16, 18 and 19 of Appendix "A".

We also checked our records of detention time on truckloads of ammunition delivered by Garrett for unloading at Port Chicago, California during the month of November, 1968.

The results of this investigation are contained in Appendix "B" attached hereto. These are by no means all

of the loads for the month of November but are the loads which we were able to get accurate information regarding unloading. The average detention time is much greater than that shown in Appendix "B". For example, we have some 30 trailers on hand for unloading at Port Chicago today. This adds up to 51 lost days on ten (10) loads or an average of five (5) days per load although the carrier's equipment was out of service, the Government (the Department of Defense) paid nothing for the lost time.

WAYNE S. GREEN
Wayne S. Green

Subscribed and sworn to before me, a Notary Public for the State of Idaho, this 11th day of December, 1968.

LOUISE E. COOPER
Louise E. Cooper
Notary Public for Idaho
Residence: Pocatello, Idaho

(Seal)

My Commission Expires: 7-15-69

APPENDIX A

☐ BLACK BALL FREIGHT SERVICE ☐ BLACK BALL TRANSPORT, Inc.

HIGHWAY MANIFEST

CARGO MANIFEST Date 11/4/65 Page No. 1 of 1

	SHIPMENT	CONSIGNEE	STOP OFF	SHIPPER — ORIGIN	SCHED.	DELIVERED	
1	2978 Rico 3436	Crane			1530	11/9	0600
2	2979 CFW29 1819 2253	Fallbrook		11/2	0730	11/16	0800
3	2980 Pac 50-1219	Corn Lumber		11/2	0730	11/11	0910
4	2981 HB 70-170	Folsom		11/2	1230	11/7	1400
5	2982 CFW29 1870 2021	Fall Brook		11/2	1230	11/16	1320
6	2983 CFW29 1647 2220	"		11/2	1230	11/16	0915
7	2984 HB 70-307	Folsom		11/2	1700	11/13	1200
8	2985 Pac 50-1275	Corn Lumber		11/2	1625	11/10	2330
9	2986 TP 20-816	Mt Julian Creek Via		11/2	1730	11/9	1100
10	2987 Pac 50-1104	Corn Lumber		11/2	Pm	11/11	1015
11	2988 Rico 3223	Crane		11/2	2145	11/12	1440
12	2989 Pac 50-1220	Corn Lumber		11/2	2200	11/10	2315
13	2990 TP 20-30112	Mt Julian Creek		11/2	2215	11/9	1630
14	2991 HMT 2647	Folsom		11/2	2300	11/7	2330
15	2992 Rico 3269	Crane		11/3	0400	11/12	1000
16	2993 Rico 3725	"		11/3	0400	11/12	1040
17	2994 Rico 3288	Mt Julian Creek		11/3	0830	11/9	1300
18	2995 Rico 3341	Crane		11/3	1230	11/12	1445
19	2996 Rico 2465	"		11/3	1230	11/12	1220
20	2997 CFW 969-28	Mc Abee		11/3	1530	11/4	1540
21	2998 Pac 50-1135	Corn Lumber		11/3	1530	11/10	2120
22	2999 Inv # 2739	Folsom		11/3	1730	11/7	2330
23	3000 Rico CMD 4645	"		11/3	1730	11/7	2330
24	3001 HMT 2753	"		11/3	2000	11/4	2300
25	3002 Rico 3032	Mt Julian Creek		11/4	0230	11/12	1100
26	3003 Rico 3120	"		11/4	0330	11/14	1030
	TOTALS						

APPENDIX A

APPENDIX "B"

Delivery and Unloading Record of Explosives Loads Delivered by Garrett Freightlines, Inc. To Port Chicago, California for Export Via Water

Trailer No.	Delivery Date	Unloading Date	Detention Time
Riss 3720	11-26-68	11-30-68	4 days
Riss 3727	11- 7-68	11-29-68	2 days
Ryder 91-137	11-10-68	11-13-68	2 days
Rock Island 6072	11-17-68	11-22-68	5 days
Rock Island 6121	11- 3-68	12- 1-68	28 days
Baggett 1519	11-19-68	11-23-68	4 days
WNX 621	11-28-68	11-30-68	2 days
Garrett 3026	11-30-68	12- 1-68	1 day
Garrett 3440	11-28-68	11-30-68	2 days
Garrett 3472	11-30-68	12- 1-68	1 day

BEFORE THE INTERSTATE COMMERCE COMMISSION

DOCKET No. MC-129908 TA

AMERICAN FARM LINES—TEMPORARY AUTHORITY APPLICATION

Verified Statement of E. E. Hamel on Behalf of Protestant, International Transport, Inc., in Reply to Verified Statement of Vincent F. Caputo

I, E. E. Hamel, am Traffic Manager of International Transport, Inc., with headquarters at Rochester, Minnesota, hereinafter for purposes of brevity referred to as International.

International has filed a protest to any grant of the application for authority between Kentucky, Indiana, Illinois, Missouri and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah and Arizona.

In its order of September 3, 1968, Division 1, acting as an Appellate Division, reversed a prior denial by the Temporary Authorities Board and granted applicant authority to transport general commodities, moving on government bill of lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas on the one hand, and, on the other, points in Washington, California, Nevada, Utah and Arizona. Subsequently, pursuant to petition of protestants, the United States District Court for the Western District of Washington, in *Black Ball Freight Service et al.* v. *United States,* stayed the effective date of the Division 1 order of September 3.

In its order of November 5, 1968, Division 1 reopened the instant proceeding to permit applicant to present additional evidence through its supporting shipper, the Department of Defense.

The additional evidence, set forth in a Verified Statement of Vincent F. Caputo, has been received and read by me. The statement is inaccurate and demonstrates a substantial lack of knowledge of the service provided by existing carriers and the manner in which the Department of Defense allocates its traffic to existing carriers.

For example, on page 14, Mr. Caputo states that there is no known carrier authorized to provide single line service for movement of DOD traffic from numerous points, such as Travis Air Force Base, California, to Crane, Indiana, etc. This statement is made in spite of the fact that DOD is using International for single line service daily from California. International holds authority to transport commodities which because of size or weight require the use of special equipment, from points in California, to 30 states including Indiana, Missouri, Kansas, etc. International holds similar authority to provide single line service from Indiana, Illinois, Missouri, Kansas, to Washington, Utah and California.

International competes for this traffic with numerous other carriers. Some of them are participants in joint-line service. It is International's experience that the Department of Defense divides the traffic equally among the carriers without regard to whether the traffic is transported in single line or 2, 3 or 4 carrier joint-line service. This policy is followed even though International has ample idle equipment available to handle additional traffic in *irregular route, 2 man, single line service.* The fact that certain carriers handle the traffic in joint-line service does not deter the Department of Defense in its daily tenders of traffic. Yet, the statement of Mr. Caputo would have the Commission believe that some priority is given to single line carriers. Such is certainly not the fact. International gets a proportionate share and no more.

The statement of Mr. Caputo is apparently not based upon any actual knowledge of the service provided by existing carriers. It should, therefore, be disregarded and the application should be denied.

E. E. HAMEL
E. E. Hamel

STATE OF MINNESOTA }
COUNTY OF OLMSTED } ss.

E. E. Hamel, being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof; and that the same is true as stated.

E. E. HAMEL
E. E. Hamel

Subscribed and sworn to before me this 4th day of December, 1968.

EVERAD R. GJOVIE
Everad R. Gjovie
Notary Public,
Olmsted County, Minn.

My Commission Expires December 28, 1973

(Received Dec. 13, 1968)

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C.

Docket No. MC 129908 TA

IN THE MATTER OF:

AMERICAN FARM LINES, OKLAHOMA CITY, OKLAHOMA,
APPLICATION, GENERAL COMMODITIES

Verified Statement of Carl Atherton, Assistant to Executive Vice President, Leonard Bros. Trucking Co., Inc.

My name is Carl Atherton. I am Assistant to the Executive Vice President of Leonard Bros. Trucking Co., Inc. a Protestant in these proceedings. I have been associated with the company since April 1957 and held the position of Traffic Manager from 1960 to April 1968 when I became Assistant to the Executive Vice President. My business address is 2595 N.W. 20th Street, Miami, Florida.

On June 7, 1968, Mr. J. Fred Dewhurst, Executive Vice President of Leonard Bros. Trucking Co., Inc. filed a Protest to the granting of the above application filed by American Farm Lines, Docket No. MC 129908 TA for temporary authority.

This verified statement is filed in support of this company's protest.

Leonard Bros. Trucking Co., Inc. is a specialized and heavy hauler carrier based in Miami, Florida. This company holds the following authority:

Leonard Bros. Trucking Co., Inc.
Certificate of Public Convenience and Necessity
No. MC 19227, Sub 32*

IRREGULAR ROUTES:

AIRPLANE and AIRPLANE PARTS, and AIRPLANE SUPPLIES and EQUIPMENT,

Between points and places in Florida.

Between points and places in Florida, on the one hand, and, on the other, points and places in Alabama, Georgia, Illinois, Louisiana, Mississippi, South Carolina, Tennessee, and Texas.

COMMODITIES (except boats), the transportation of which because of their size or weight require the use of special equipment.

Between points and places in Florida, on the one hand, and, on the other, points and places in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, traversing Arkansas and Iowa for operating convenience only.

COMMODITIES, which because of size or weight require special equipment, except airplanes and airplane parts,

Between points and places in Florida, on the one hand, and on the other, points and places in Alabama, Georgia and South Carolina.

Leonard Bros. Trucking Co., Inc.
Certificate of Public Convenience & Necessity
No. MC-19227, Sub 43

IRREGULAR ROUTES:

COMMODITIES other than oilfield equipment, which because of size or weight require specialized handling or the use of special equipment, over irregular routes,

Between points and places in Florida, on the one hand, and on the other, points and places in Texas.

Leonard Bros. Trucking Co., Inc.
Certificate of Public Convenience & Necessity
No. MC-19227, Sub 44

IRREGULAR ROUTES:

UNCRATED AIRPLANE PARTS, SUPPLIES, MACHINERY, and equipment used in the maintenance, servicing, repair and operation of airplanes, the transportation of which, because of their size or weight, require special equipment or special handling or rigging, over irregular routes,

Between points and places in Florida, on the one hand, and on the other, points and places in California.

Authority is granted to traverse Georgia, Alabama, Tennessee, Mississippi, Louisiana, Arkansas, Oklahoma, Texas, New Mexico, Arizona, and Nevada for operating convenience.

Leonard Bros. Trucking Co., Inc.
Certificate of Public Convenience & Necessity
No. MC-19227, Sub 54

IRREGULAR ROUTES:

AIRPLANE PARTS and SUPPLIES, MATERIALS, PARTS and COMPONENTS used in the construction of aircraft, and supplies, machinery and equipment, used in the maintenance, servicing, repair and operation of aircraft, except those which because of their size or weight require the use of special equipment and handling, or rigging, *and missile parts, and supplies, materials, parts and components* used in the maintenance, servicing, repair, and operations of missiles.

Between points in Florida, on the one hand, and on the other, points in California.

From Burbank and Chula Vista, Calif., to Marietta, Ga., with no transportation for compensation on return except as otherwise authorized.

Leonard Bros. Trucking Co., Inc.
Certificate of Public Convenience & Necessity
No. MC-19227, Sub 75 (In Part)

Such other COMMODITIES as required specialized handling or rigging because of size or weight.

Between points in Kansas, Missouri, Nebraska, New Mexico and Oklahoma.

Between points in Kansas, Missouri, Nebraska, New Mexico and Oklahoma, on the one hand, and, on the other, points in Texas.

Leonard Bros. Trucking Co., Inc.
Certificate of Public Convenience & Necessity
No. MC-19227, Sub 88

IRREGULAR ROUTES:

COMMODITIES, (other than MACHINERY, EQUIPMENT, MATERIALS, and SUPPLIES used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and machinery, materials, equipment and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof) the transportation of which because of size or weight require the use of special equipment and related parts when their transportation by said carrier of commodities which by reason of size or weight require special equipment.

Between points in Texas.

Between points in Texas, on the one hand, and on the other, points in Arkansas and Louisiana.

Leonard Bros. Trucking Co., Inc.
Certificate of Public Convenience & Necessity
No. MC-19227, Sub 93

IRREGULAR ROUTES:

(1) GUIDED MISSILES, (2) GUIDED MISSILE PARTS, and (3) GUIDED MISSILE SUPPLIES and EQUIPMENT used in the maintenance, servicing, repair, and operation of GUIDED MISSILES, restricted against the transportation of any of the above authorized commodities which, because of size or weight, require the use of special equipment or special handling.

Between points in Florida, on the one hand, and, on the other, points in Alabama, Georgia, Illinois, Louisiana, Mississippi, South Carolina, and Texas.

Leonard Bros. Trucking Co., Inc.
Certificate of Public Convenience & Necessity
No. MC-19227, Sub 112

IRREGULAR ROUTES:

AIRPLANES AND AIRPLANE PARTS, the transportation of which, because of size or weight, require the use of special equipment,

From Newbury Park, Chula Vista, and Riverside, California, to points in King and Snohomish Counties, Washington.

Leonard Bros. Trucking Co., Inc. is the majority Stockholder of Southwestern Transfer Company, Inc. who holds the following authority:

SOUTHWESTERN TRANSFER CO., INC.
Certificate of Public Convenience & Necessity
No. MC-31321

IRREGULAR ROUTES:

MINE MACHINERY, RANCH and FARM EQUIPMENT, and CONTRACTORS' EQUIPMENT, MACHINERY, MATERIALS and SUPPLIES,

Between El Paso, Texas and points within 50 miles thereof, on the one hand, and, on the other, points in New Mexico.

COMMODITIES, the transportation of which because of size or weight requires the use of special equipment, and RELATED MACHINERY PARTS and RELATED CONTRACTORS' MATERIALS and SUPPLIES when their transportation is incidental to the transportation of commodities which by reason of size or weight requires special equipment.

Between points and places in Arizona, and New Mexico and those in Texas west of the eastern boundary of Lipscomb, Hemphill, Wheeler, Collingsworth, Hall, Motley, Dickens, Kent, Scurry, Howard, Glascock, Reagan, Crockett and Val Verde Counties, Texas.

MC-31321 Sub 6 (In Part)

COMMODITIES requiring special handling and rigging because of size or weight, over irregular routes,

Between points and places in Texas.

Leonard Bros. Trucking Co., Inc. has purchased the following operating authority from Underhill Transfer Company and the transaction was consummated June 1, 1968.

UNDERHILL TRANSFER COMPANY
Certificate of Public Convenience & Necessity
No. MC-32525 (In Part)

IRREGULAR ROUTES:

MACHINERY

Between Yuma, Arizona and Calexico, California, serving all intermediate points and all off-route points

within 25 miles of Yuma and within 15 miles of route as specified immediately below:

From Yuma over U.S. Highway 80 El Centro, California, thence over U.S. Highway 99 to Calexico, California, and return over the same route.

Between Yuma, Arizona and Westmoreland, California, serving all intermediate points, and all off-route points within 25 miles of Yuma and within 15 miles of route as specified immediately below:

IRREGULAR ROUTES:

GENERAL COMMODITIES, except liquids in bulk and articles of unusual value.

Between points in California and Arizona within 25 miles of Yuma, Arizona, including Yuma.

My company provides an interchange service whereby the same truck and drivers handle the shipments from origin to destination with carriers holding the following authorities:

PAXTON TRUCKING COMPANY
Certificate of Public Convenience & Necessity
MC-13522 Sub 9 (In Part)

Such COMMODITIES *as require special equipment or handling by reason of their unusual size, weight or shape* and in connection therewith *parts, equipment, materials and supplies not requiring special equipment or handling* that are appurtenant to or a necessary part of the same project or transaction.

Between points on or within 50 miles airline distance laterally of the following highways:

(A) U.S. Highway 101, 101 alternate and 101 by-pass between the Mexican Border and the California-Oregon State Line.

(B) U.S. Highway 99, 99-E and 99-W between the Mexican Border and the California-Oregon State Line.

(C) U.S. Highway 395 between San Diego and the Nevada-California State Line near Topaz and between the California-Nevada Line near Peavine and the California-Oregon Line.

(D) U.S. Highway 40 and 40 alternate between San Francisco and the Nevada State Line.

(E) U.S. Highway 50 between San Francisco and the Nevada State Line.

(F) U.S. Highway 60 between Los Angeles and the California-Arizona State Line.

(G) U.S. Highway 80 between San Diego and the Arizona State Line.

(H) U.S. Highway 66 between Los Angeles and the Arizona State Line.

(I) U.S. Highway 91 between Barstow and the Nevada State Line.

(J) U.S. Highway 97 between its junction with U.S. Highway 99 and the California-Oregon State Line.

(K) U.S. Highway 95 between its junction with U.S. Highway 60 and the California-Nevada State Line.

(L) U.S. Highway 299 between its junction with U.S. Highway 101 and U.S. Highway 395.

(M) U.S. Highway 399 between Ventura and its junction with U.S. Highway 99.

(N) U.S. Highway 466 between Paso Robles and the California-Nevada State Line.

(O) California State Highway 20 between its junction with U.S. Highway 101 and U.S. Highway 395.

(P) California State Highway 36 between its junction with U.S. Highway 99 and U.S. Highway 395.

(Q) California State Highway 139 between its junction with U.S. Highway 299 and the California-Oregon State Line.

(R) California State Highway 33 between Wheeler Ridge and Tracy.

(S) California State Highway 127 and California Highway 190 between junction of California State Highway 127 and U.S. Highway 466 near Baker and junction of California State Highway 190 with U.S. Highway 395.

Carrier may conduct its operation along any street, road, highway or combination of such thoroughfares necessary or convenient to the rendering of its service, including but not limited to the highways set forth in paragraphs (A) through (S) above.

Carrier shall be subject to the following restrictions:

Except for deliveries to and from job sites such as construction projects, oil, gas, or water wells, or mines, oil fields, warehouses, or field storage yards, no freight shall be transported in excess of ten miles on either side of highway designated in paragraphs (A) through (S) above.

MITCHELL BROS. TRUCK LINES, (A CORP.)
Certificate of Public Convenience & Necessity
No. MC-32882

IRREGULAR ROUTES:

FOREST PRODUCTS and LUMBER, between points and places in Oregon, Washington, and Idaho, and that part of California within 150 miles of the Oregon-California State Line. AGRICULTURAL COMMODITIES, in truckloads, between Portland, Oregon, and Vancouver, Washington, on the one hand, and on the other, points and places in Washington and Oregon. BUILDING MATERIALS AND HEAVY MACHINERY, in truckloads, between points and places within

50 miles of Portland, Oregon, on the one hand, and on the other, points and places in Oregon and Washington, and Nezperce, Payette, Canyon and Owyhee Counties, Idaho. BUILDING MATERIALS and HEAVY MACHINERY, including heavy steel girders, steel pipe, boilers, water works, supplies and plumbing goods, cement, cast stone, wooden pipe tanks (set up or knocked down), and fabricated steel reinforcing bars, and other commodities of similar nature, between Portland, Oregon, and Vancouver, Washington, on the one hand, and on the other, points and places in Oregon, Washington and Idaho, and that part of California within 150 miles of the Oregon-California State Line. MACHINERY, CONTRACTORS' EQUIPMENT and CONSTRUCTION MATERIALS, between points and places in Washington and Oregon. Between Seattle, Washington, on the one hand, and on the other, points and places in that part of Montana bounded by a line beginning at Great Falls and extending in a northerly direction through Whitefish to the boundary of the United States and Canada, thence in a westerly direction along the boundary of the United States and Canada to junction U.S. Highway 91, thence along U.S. 91 to Great Falls, between points and places in Washington, on the one hand, and on the other, points and places in Idaho, and those in that part of Montana of the west of a line beginning at the Montana-Wyoming State Line and extending along U.S. Highway 87 to Great Falls, thence along U.S. Highway 91 to the boundary of the United States and Canada. HEAVY MACHINERY and BUILDING MATERIALS between points in Josephine, Jackson, Douglas, and Curry Counties, Oregon, on the one hand, and on the other, points in California north of a line extending east from Half Moon Bay through Redwood City and Miami to the Nevada-California State Line, including the points named.

CARGO CARRIERS, INC.
Certificate of Registration No. MC 121449 (Sub-No. 1)*

PART I

* * * transportation, as a highway common carrier, of general commodities as follows:

1. Between all points and places in the Los Angeles Territory as described in Part II set forth below.

2. Between all points and places in the San Francisco Territory as described in Part III set forth below (See Restriction).

3. Between all points and places on and within 25 miles laterally of the following routes (See Restriction).

   a. U.S. Highway 99 between San Fernando and Sacramento, inclusive.

   b. State Highway 65 between its junction with U.S. Highway 99 near Bakersfield and its junction with State Highway 63 north of Elderwood.

   c. State Highway 63 between its junction with State Highway 65 and Orosi, inclusive.

   d. Unnumbered highways known as El Monte Way, Alta Avenue, Manning Avenue and Reed Avenue between Orosi and Minkler via Dinuba and Reedley.

   e. State Highway 180 between Minkler and Fresno, inclusive.

   f. U.S. Highway 40 between Richmond and Sacramento, inclusive.

   g. U.S. Highway 50 between Castro Valley and Stockton, inclusive.

   h. State Highway 120 between its junction with U.S. Highway 50 near Tracy and Manteca, inclusive.

i. State Highway 4 between its junction with U.S. Highway 40 near Pinole and Stockton, inclusive.

j. State Highway 24 between Oakland and Sacramento, inclusive.

4. Through Routes and rates may be established between any and all points described in subparagraphs 1 through 3 (j) above subject to the Restriction below.

5. Applicant may operate over and along the following routes for operating convenience only serving no intermediate or off-route points:

a. U.S. Highway 101 and 101 Alternate between the Los Angeles Basin Territory and the San Francisco Territory.

b. State Highway 152 between Gilroy and Califa.

RESTRICTION: Except for shipments originating in Pittsburg, no shipment shall be transported which has both origin and destination at points north of Fresno.

Applicant shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10C of Minimum Rate Tariff No. 4-A.

2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.

3. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.

4. Commodities when transported in bulk in dump trucks or in hopper-type trucks.

5. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

6. Logs.

PART II

LOS ANGELES BASIN TERRITORY includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately two miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redland Boulevard to U.S. Highway No. 99; northwesterly along U.S. Highway No. 99 to the corporate boundary of the City of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U.S. Highway No. 60; southwesterly along U.S. Highways Nos. 60 and 395 to the county road approximately one mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the city of San Jacinto; easterly, southerly and westerly along said corporate boundary to

San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of The Atchison, Topeka & Santa Fe Railway Company; southwesterly along said right of way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the County road intersecting U.S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U.S. Highway No. 395; southeasterly along U.S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County said boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning.

PART III

SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point of the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right

of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the university of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

(*) HEAVY TRANSPORT, INC.
Certificate of Public Convenience & Necessity
MC 14138 (Sub-No. 4)*

(A) MACHINERY, EQUIPMENT, MATERIALS AND SUPPLIES incidental to or used in the construction, exploration, development, operation, refining, production and maintenance of facilities for the discovery, development, production, or refining of natural gas, petroleum and petroleum products.

(B) MACHINERY AND EQUIPMENT of unusual size or weight.

(C) PROPERTY OR COMMODITIES of unusual size and weight requiring use of special equipment.

(D) BUILDING CONTRACTOR'S EQUIPMENT.

(E) GRADING AND PAVING EQUIPMENT.

(F) ELECTRICAL TRANSMISSION EQUIPMENT.

(G) WATER WELL DRILLING EQUIPMENT.

(H) MINING MACHINERY AND EQUIPMENT.

(I) FABRICATED STRUCTURES, TANKS AND HANGARS.

(J) SUCH MATERIALS AND SUPPLIES as are appurtenant to or a necessary part of the machinery, equipment and property herein authorized to be transported in subparagraphs (b) to (j) inclusive, but not building or construction materials and supplies generally used in the various building and construction businesses.

From, to and between all points on or within fifty road miles laterally of the following routes:

U.S. Highway 101, 101 By-Pass and 101 Alternate, between the Mexican border and King City.
U.S. Highway 99 between the Mexican border and Madera.
U.S. Highway 6 between Los Angeles and Benton Station.

U.S. Highway 395 between San Bernardino and Inyokern.
U.S. Highway 127 between Baker and Nevada state line.
U.S. Highway 466 between Barstow and Nevada state line.
U.S. Highway 66 between Los Angeles and Needles.
U.S. Highway 70 between Los Angeles and Blythe.
U.S. Highway 80 between San Diego and Winterhaven.

By tacking authorities named above and in through interchange service, protestant and its connecting carriers can perform a transportation service for airplane and missile parts and commodities requiring special equipment between points and places in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas on the one hand and, on the other, Points and Places in Washington, California, and Arizona. Commodities requiring special equipment do include such commodities when they contain Class A & B Explosives.

Protestant hauls commodities on Government bills of lading. Below is a record of the revenue earned by month on shipments moving on Government bills of lading for the year ending as listed:

May 1967	$ 251,477
June 1967	361,704
July 1967	245,328
August 1967	304,412
September 1967	251,216
October 1967	253,525
November 1967	207,735
December 1967	238,578
January 1968	294,862
February 1968	266,041
March 1968	288,126
April 1968	298,016
TOTAL	$3,261,020

It is impossible to actually analyze the movement within the available time. However, below is the revenue earned within this period originating within the territory sought:

California	$ 628,533
Texas, Kansas, Okla., Arkansas	616,502
Louisiana	35,529
Other States Involved	164,111
TOTAL	$1,444,675

Exhibit No. 1 lists Protestant's equipment. The trailer equipment consists of flatbeds, dropframes, lowboys, vans all of which are adaptable to transport the commodities herein involved which Protestant is authorized to haul.

Exhibit No. 2 lists Protestant's terminals.

Exhibit No. 3 is an Operations Map which pictorially interprets Protestant's authorities.

Protestant is presently hauling commodities requiring special equipment which also contain explosives.

Below is a list of States between which such shipments have moved:

Arkansas	to California
Arizona	to Florida
California	to Connecticut
"	to Florida
"	to Oklahoma
"	to Maryland
"	to Massachusetts
"	to New Jersey
"	to New York
"	to South Carolina
"	to Tennessee
"	to Texas
"	to Virginia
Connecticut	to California

Florida	to California
Florida	to New Mexico
Florida	to Nevada
Louisiana	to California
Maryland	to California
North Carolina	to California
Oklahoma	to California
Pennsylvania	to New Mexico
South Carolina	to California
Virginia	to California
Virginia	to New Mexico

ARGUMENT

The application seeks an extensive grant of authority on a temporary basis. According to the application published the supporting shipper is the Office of Judge Advocate General who Protestant understands to be an attorney for the Army, and, certainly no shipper of freight. The dictionary describes him as "a military legal officer; especially, an officer designated to act as prosecutor at a court-martial".[1]

The movement of Government Freight is controlled by the Military Traffic Management and Terminal Service. This agency knows the availability of equipment. It employs qualified experts at a great cost to the government to perform this needed service. Protestant cannot understand why this agency has been by-passed and their expertise ignored.

Protestant has provided service for the military since the beginning of World War II. It has provided much special equipment to handle delicate government freight.

Protestant has no copy of the supporting document although certain portions have been read to the writer. This document fails to comply with Section 1131.2 (c) of the

[1] Webster's New World Dictionary.

Rules of Practice. It would hardly appear that the Commission can make rules for all parties to follow, and then fail to enforce them simply because the support comes from the Army Attorney.

Section 210a. of Part II of the Interstate Commerce Act provides:

> "Sec. 310a. (a) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify but for not more than an aggregate of 180 days, and shall create no presumption that corresponding permanent authority will be granted thereafter."

The Commission's rules under Section 1131.2, Filing of Applications (for temporary authority) have been carefully promulgated to insure compliance with the above section.

During August 26, 1963, Protestant filed an application for commodities requiring special equipment between points and places in California on the one hand, and, on the other, points and places in Texas and New Mexico. Protestant, as Applicant in these proceedings, introduced over fifty witnesses at hearings held in Dallas, Los Angeles, and Washington By Order of December 16, 1966, served December 29, 1966 entitled:

LEONARD BROS. TRANSFER, INC.
EXTENSION CALIFORNIA-TEXAS
103 M.C.C. 263. The full Commission ruled:

> "In view of the large number of carriers shown to be participating in the traffic we will not engage in speculative possibilities. Neither applicant has established on the record that denial of its application will effec-

tively preclude future participation in joint-line movements. For this reason and because of other circumstances, the cases relied upon by applicants are not controlling here.

"Applicants' case in the last analysis rests on the proposition that joint-line service is inherently inadequate. However, as seen, the record here does not establish existing joint-line service as inadequate; and there is presently substantial single-line service. Interline service between two or even among three carriers cannot be said to be per se inadequate particularly where, as here, some very long hauls are involved. See Curtis supra at page 900 and case there cited. While some instances of service considered by the shippers to be unsatisfactory were mentioned, there is no persuasive showing of a pattern of materially unsatisfactory service. *Applicants ask for too much, based on too little.* (emphasis supplied)

If over fifty witnesses, including the National Aeronautics and Space Administration and General Electric Company failed to prove the need for a grant which included only part of the commodities and far less territory, then one lawyer's letter, even though from the Army, would certainly seem that this applicant is asking for too much more based on a lot less.

Respectfully submitted,

/s/ CARL ATHERTON
Carl Atherton
Assistant to Executive Vice President
Leonard Bros. Trucking Co., Inc.
2595 N.W. 20th Street
Miami, Florida

Dated at Miami, Florida
December 12, 1968

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Verified Statement has been forwarded this date by first class mail to the Applicant and Applicant's Representative.

/s/ CARL ATHERTON
Carl Atherton

December 12, 1968

VERIFICATION

STATE OF FLORIDA }
COUNTY OF DADE } ss:

Carl Atherton, being duly sworn, deposes and says: that he is the Assistant to the Executive Vice President of Leonard Bros. Trucking Co., Inc.; that he has read the foregoing and knows the contents thereof; that the same are true as stated, except as to matters and things if any, stated on information and belief, and that as to these matters and things, he believes them to be true.

/s/ CARL ATHERTON
Carl Atherton

Subscribed and sworn to before me this 12th day of December 1968.

/s/ JOSEPH W. WHITE, JR.
Notary Public

Notary Public, State of Florida at Large
My Commission Expires Mar. 22, 1972
Bonded Through Fred W. Diestelhorst

EXHIBIT NO. 1

Leonard Bros. Trucking Co., Inc.

Equipment Summary

Equipment Description		In Service
Tractors		
Straight Cab Tractors	21	
Sleeper Cab Tractors	74	
Air-Ride Sleeper Cab Tractors	17	
Total Tractors in Service		137
Trucks		
Lift Gate Trucks	6	
Gin Pole Trucks	5	
Pick-Up Trucks	8	
Total Trucks		19
Trailers		
Single-Axle Flat Bed Trailers	4	
Total Single Axle Trailers		4
Tandem Axle Flat Bed Trailers, Viz:		
Spring Suspension Trailers	26	
Spring Suspension Sliding Tandem Trailers	13	
Spring Suspension Stretch Trailers	7	
Air-Ride Suspension Trailers	1	
Air-Ride Suspension, Sliding Tandem Trailers	18	
Air-Ride Suspension, Stretch Trailers	7	
Total Tandem Axle Trailers		72
Drop Frame Trailers, Viz:		
Spring Suspension Trailers	30	
Air-Ride Suspension Stretch Trailers	9	
Total Drop Frame Trailers		39

Equipment Description	In Service	
Well (Double-Drop Frame) Trailers		
Spring Suspension Trailers	32	
Spring Suspension Stretch Trailers	7	
Air-Ride Suspension Aluminum Constructed Trailers	2	
Air-Ride Suspension Steel Spring Stretch Trailers	3	
Total Well Type Trailers		44
Heavy Duty Lowboy Trailers, Viz:		
Spring Suspension Trailers-Removable Goose Necks	18	
Spring Suspension Trailers-Permanent Deck	1	
Air-Ride Suspension, Stretch Bed Trailers-Removable Goose Necks	7	
Air-Ride Suspension Permanent Deck	1	
Total Heavy Duty Lowboys		27
Van Trailers, Viz:		
Spring Suspension, Level Deck	2	
Spring Suspension, Drop Frame	9	
Spring Suspension, Sliding Tandem	3	
Spring Suspension, Open Top Stretch	1	
Air-Ride, Drop Frame	2	
Air-Ride, Sliding Tandem	6	
Total Vans		23
Pole Trailers		
Telescopic Pole Trailers	6	
Rear Steering Telescopic, Pole Trailers	1	
Total Pole Trailers		7

Equipment Description	In Service	
Aircraft Trailers, Viz:		
Spring Suspension Trailers	1	
Air-Ride Suspension Trailers	2	
Air-Ride Suspension Stretch Bed Trailers	4	
Spring Suspension, Single Axle, Double Drop	2	
Total Aircraft Trailers		9
Total Trailers		225
Accessorial Equipment		
Jeep Dollies	21	
House Moving Dollies	16	
Cargo Boxes	14	
Service Cars	4	
Sales Cars and Escort Vehicles	21	
Fork Lifts	26	
Mobile Cranes Up to 100 Ton Capacity	19	
Two Way Radios	26	
Propeller Jigs for Ships' Propellers Up to 30 Ton Capacity	7	
Extra Axle Attachments (Air-Ride for Lowboys)	6	
Extra Axle Attachments for Flatbed Trailers	2	
Total Accessorial Equipment		162

LEONARD BROS. TRUCKING CO., INC.

Terminal List

ORLANDO, FLORIDA 32805
2411 South Orange Blossom Trail
Telex: 051-4127
Phone: AC 305—841-1415

COCOA, FLORIDA 32922
6 Miles South of Cocoa on U. S. #1
Phone: AC 305—636-2420

STOCKTON, CALIFORNIA 95209
5500 South Airport Way
WU FAX-7289
Phone: AC 209—931-5533

LOS ANGELES, CALIFORNIA
9235 Wilshire Street
Rosemead, California 91770
Telex: 674-4357
Phone: AC 213—285-2535

CHARLESTON HEIGHTS, S. C.
P. O. Box 7215—Zip 29405
Phone: AC 803—722-1653

MACON, GEORGIA 31206
5700 Houston Road
Phone: AC 912—788-2460
(Warner Robins, Georgia)

MIAMI, FLORIDA 33152
2595 N. W. 20th Street
Telex: 051-527
General and Executive Offices
Long Haul Over-The-Road
AC 305—634-2551
Pickup and Delivery AC 305—633-6611
Local Trucking—Riggers—and
Crane Rental AC 305—635-0346

GRAHAM, TEXAS 76050
[illegible] Main Street
WU [illegible]
Phone: AC 214—549-2443

SAN ANTONIO, TEXAS 78205
1776 S. San Marcos St.
Phone: AC 512—CA 7-2221

PENSACOLA, FLORIDA 32502
4451 Pensacola Boulevard
Telex: 056-8114
General Dispatch and Truck Traffic
Information Center AC 904—476-7020
Local Pickup and Delivery
and Interstate AC 904—476-7024

GRANBURY, NEW JERSEY 08512
U. S. Route 130, North
Telex: 834-3452
Phone: AC 609—395-0125

WAYS Lines

MAIL DIRECT TO YOUR NEAREST

LEONARD BROS. OFFICE

Five Locations For Your Convenience

I

General Dispatch and
Truck Traffic Information Center

PENSACOLA, FLA.

Intermidie Inbound WATS Line . . .

800-874-0234

II

New England & Mid Atlantic States
Area Dispatch Office

CHARBURY, N. J.

Inbound WATS Line . . . 800-257-7034

III

Southwest & Midwest Area Dispatch Office

DALLAS, TEXAS

Inbound WATS Line . . . 800-527-0520

IV

from any point in Florida to the
North and Central Florida Dispatch Office

ORLANDO, FLA.

Inbound WATS Line . . . 800-432-5805

V

from any point in Florida to the
General Office and South Florida Dispatch Office

MIAMI, FLA.

Inbound WATS Line . . . 800-432-5021

LEONARD BROS. TRUCKING CO., INC.

General Offices
2595 N.W. 20th Street
P.O. Box 402, Miami, Florida 33152

EXHIBIT NO. 2

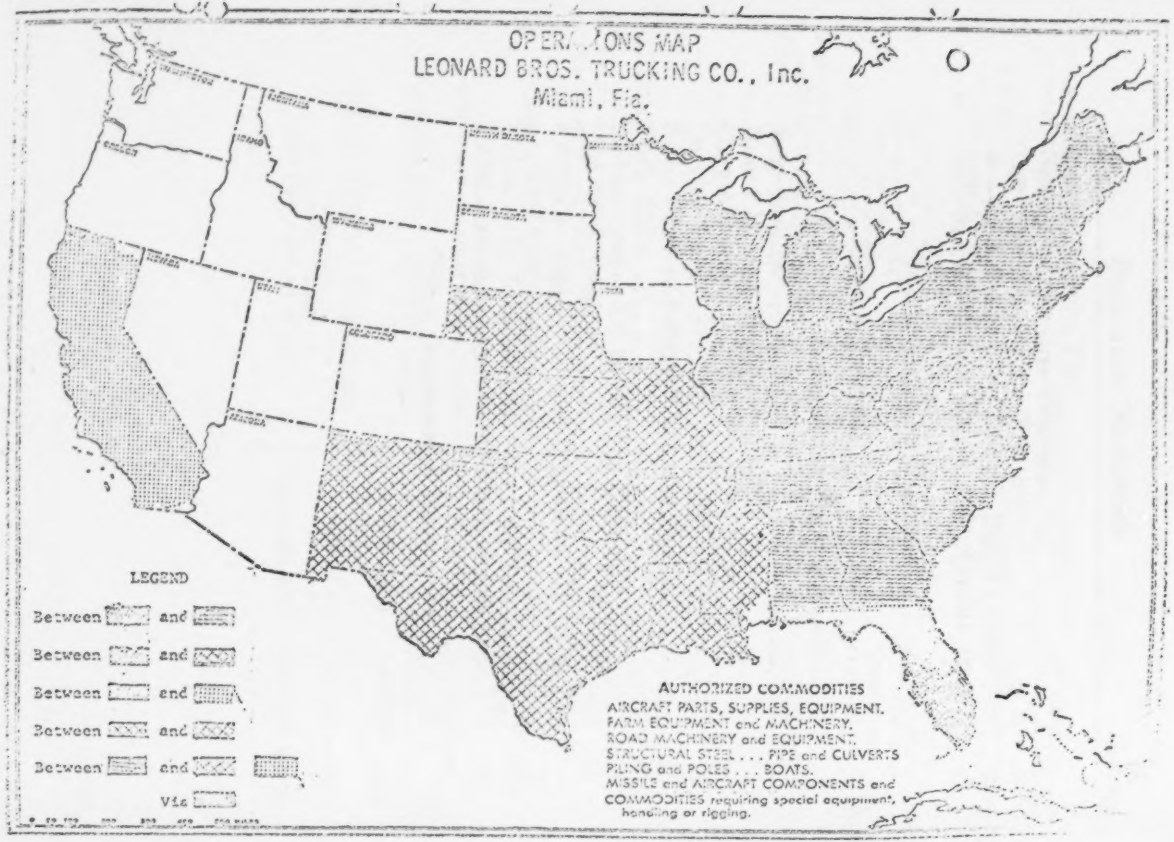
OPERATIONS MAP
LEONARD BROS. TRUCKING CO., Inc.
Miami, Fla.
LEGEND
Between and
Between and
Between and
Between and
Between and
Via
AUTHORIZED COMMODITIES
AIRCRAFT PARTS, SUPPLIES, EQUIPMENT.
FARM EQUIPMENT and MACHINERY.
ROAD MACHINERY and EQUIPMENT.
STRUCTURAL STEEL . . . PIPE and CULVERTS
PILING and POLES . . . BOATS.
MISSILE and AIRCRAFT COMPONENTS and
COMMODITIES requiring special equipment, handling or rigging.

EXHIBIT NO. 3

Before The
INTERSTATE COMMERCE COMMISSION

American Farm Lines
MC-129908 TA

Statement of Position of Merchants Fast Motor Lines, Inc. and Renewal of Motion To Vacate Order of November 5, 1968, of Division 1, Acting as an Appellate Division

To the Interstate Commerce Commission:

Merchants Fast Motor Lines, Inc. submits herewith its statement of position in connection with ths status of the above captioned application, and simultaneously renews its motion to vacate and set aside the Order of Division 1, acting as an Appellate Division, entered November 5, 1968, and in support thereof would show the following:

I.

On September 3, 1968, Division 1, acting as an Appellate Division, reversed a prior Order of the Temporary Authorities Board and granted American Farm Lines, herein referred to as applicant, temporary authority for ninety days authorizing motor carrier operations in the transportation of general commodities, including classes A and B explosives, moving on Government bills of lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah and Arizona.

II.

Merchants Fast Motor Lines, Inc., herein referred to as Merchants, filed a petition seeking reconsideration of the Order of Division 1, granting the application, contending therein that applicant had failed to establish that an immediate and urgent need existed for the proposed service. Additionally, numerous other petitions for reconsideration of the Order of grant were filed by other car-

riers. On October 17, 1968, applicant made reply to the petitions for reconsideration and included therein a request to re-open the record in this proceeding for the purpose of introducing additional matters, including evidence offered by the Department of Defense. The evidence which applicant seeks to introduce is contained in a so-called "Reply" filed by the Department of Defense to protestants' petitions for reconsideration. As of this date, the petition of Merchants for reconsideration, as well as the other petitions, have not been acted on by the Commission.

III.

Notwithstanding the fact that various petitions for reconsideration of the Order of September 3, 1968, were pending, applicant commenced operations, and in order to preserve the status quo, certain of the protesting carriers, on September 25, 1968, filed a complaint in the United States District Court for the Western District of Washington, seeking to set aside the Order of grant. On October 3, 1968, the Court, in Civil Action No. 3828, Black Ball Freight Service, et al. vs. United States, issued a temporary restraining order enjoining the September 3, 1968 Order from going into effect or otherwise becoming operative.

IV.

On November 5, 1968, Division 1, acting as an Appellate Division, reopened these proceedings for the purpose of receiving a verified statement from the Department of Defense. As basis for this Order, Division 1 found that the reply filed by the Department of Defense to protestants' petitions for reconsideration contained "additional reasons indicating an immediate and urgent need for applicant's service which cannot be met by existing carriers," and as this "additional evidence" was not part of the original record, Division 1 ordered the proceedings reopened.

V.

On December 2, 1968, Merchants served a "Petition for Reconsideration and Motion to Vacate Order," con-

tending therein that the November 5, 1968 Order of Division 1, reopening the record, was null and void for the following reasons: (a) the procedures prescribed by the Commission's duly promulgated rules and regulations for reopening the record in this proceeding were not followed. (b) by virtue of appeal, the Commission has lost jurisdiction over any phase of this proceeding until the Court has terminated its jurisdiction and the case has been remanded to the Commission; and (c) the action of the applicant and the Department of Defense in seeking to introduce new evidence and the action of the Commission in undertaking to receive this new evidence are evidently an attempt to modify or change the prior Order of September 3, 1968, and constitute a violation of the Court's temporary restraining order.

VI.

The Order of November 5, 1968, sets the date of December 6, 1968, as the date for the filing of verified statements by protestants in response to any statement submitted by the applicant. The Department of Defense has filed a verified statement pursuant to this Order. The due date for replies to this statement has been extended to December 13, 1968.

VII.

Merchants has determined not to submit a verified statement in reply to the statement filed by the Department of Defense for the following reasons:

(1) Merchants has presently pending a petition for reconsideration and motion to vacate the Order of November 5, 1968, reopening this proceeding and until this petition is acted upon one way or another, it is the position of Merchants that the statement of the Department of Defense is not properly before the Commission;

(2) Merchants is fearful that the filing of a reply to the verified statement of the Department of Defense would constitute a waiver of its objection to the Commission's action in reopening this record and acquiescence in highly

irregular procedures utilized by the Commission in issuing the Order of November 5, 1968;

(3) In the event the pending petition of Merchants is overruled, the Order reopening this proceeding affirmed, and the verified statement of the Department of Defense received, —Merchants Fast Motor Lines, Inc. does not deem a reply necessary for the reason that the verified statement does not comply with certain rules and regulations of the Commission, particularly 49 CFR § 1131.2(c) which provides:

> "Any such supporting statement must contain at least the following information:
>
> ". . . . .
>
> "(8) Whether efforts have been made to obtain the service from existing motor, rail or water carriers, and the dates and results of such efforts.
>
> "(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal."

WHEREFORE, Merchants Fast Motor Lines, Inc. reurges its motion for the vacation of the Order of November 5, 1968, and prays for such other and further relief to which it may show itself to be entitled.

Respectfully submitted,

REAGAN SAYERS
Reagan Sayers
CLAYTE BINION
RAWLINGS, SAYERS & SCURLOCK

Century Life Building
P.O. Box 17007
Forth Worth, Texas 76102

Attorneys for Merchants Fast Motor Lines, Inc., Protestant

Due Date: December 13, 1968

Before The
INTERSTATE COMMERCE COMMISSION

In the Matter of:

AMERICAN FARM LINES—TEMPORARY AUTHORITY APPLICATION

Docket No. MC-129908 TA

Verified Statement of Arthur J. Sibik

My name is Arthur J. Sibik, and my business address is 7000 South Pulaski Road, Chicago, Illinois. I am Assistant Traffic Manager of Midwest Emery Freight System, Inc. (Midwest Emery) and its wholly owned subsidiary, Little Audrey's Transportation Co., Inc. (Little Audrey's). I have held this position for many years, and in connection with my position with these two companies, I handle rates, routings, appearances before the Interstate Commerce Commission, and all other normal traffic functions. It is necessary that I be and I am thoroughly familiar with the operations of both Midwest Emery and Little Audrey's. Because of my familiarity and position with Midwest Emery and Little Audrey's, I am submitting this verified statement on behalf of both companies, pursuant to the directions of the Commission in its Order, served November 9, 1968, in the above captioned matter.

All protestants to the subject application for temporary authority were required to submit verified statements in response to any statement submitted by applicant in accordance with the Commission directive in the above-cited Order reopening the proceeding on the Commission's own motion for the purpose of receiving a verified statement from the supporting shipper, the Department of Defense, in which the shipper was directed to specify the commodities and points between which there purportedly is an immediate and urgent need for the proposed service which cannot be met by existing carriers. Accordingly,

the instant statement is filed in response to the statement filed by the Department of Defense.

The interest of protestants herein have previously been spelled out in their protests and other pleadings filed in this proceeding, and it is respectfully requested that these pleadings be incorporated in the instant statement by reference, to avoid repetition. Suffice it to state here that both protestants are interested primarily in the transportation of foodstuffs, both raw and manufactured, including beef, meat products, meat by-products, and articles distributed by meat packing houses, from, to and between some or all points collectively in Indiana, Illinois, Missouri, Oklahoma, Kansas, Washington, California, Nevada and Arizona.

It would appear, from a reading of the shipper's verified statement to which this pleading is addressed, that the only commodities which the Department of Defense is interested are Class A and B explosives and related dangerous articles, classified by the shipper as "DOD traffic" (see statement of shipper, pp. 1, 2, 5-6, 9, 11, 13, 15, 16, 17-18 and 20). Protestants, of course, are not interested in the transportation of such commodities, in a grant of authority to applicant encompassing the transportation of explosives, munitions, ammunition, and related items, within the application territory, would have no adverse competitive effect on the operations of protestants. The only mention by the supporting shipper of any article beyond the scope of Class A and B explosives and related items appears on Pages 17-18 of its statement when some vague reference is made to the purported desirability of formulating truckload shipments which are composed in part of explosives and in part of "various other types of commodities that are normally referred to as 'freight, all kinds' ". It would appear, however, that the only commodities beyond the scope of explosives, ammunition, etc., that the shipper would be interested in moving would be paper articles, boots, shoes and canned

fruits, vegetables, and dried fruits (statement of shipper, p. 6). Nowhere in this statement, however, is the volume of such nonexplosive traffic specified, nor are we favored with any salient details respecting the origin and destination points from and to which such traffic would be moved, or the frequency with which such traffic would be handled in mixed shipments with explosive articles.

In these circumstances, the verified statement of the Department of Defense falls far short of the specific directive of the Commission, in its Order on November 5, 1968, requiring the shipper to specify the probative details concerning its traffic patterns which the instant proposal for temporary authority is purportedly designed to accommodate. Accordingly, it is difficult, if not impossible, for protestants herein to be specific with respect to setting forth the precise scope of the service provided by its opposing carrier here and that would conflict with the instant proposed service, in light of the fact that the instant verified statement of the supporting shipper is couched in the most vague and general of terms with respect to that undisclosed, and probably minimal portion of its overall traffic consisting of foodstuff items in which protestants herein vitally are interested.

Suffice it to state for our purposes that no complaint against either Midwest Emery's or Little Audrey's services was set forth in the shipper's statement. Midwest Emery constantly solicits traffic within the scope of the instant application to the extent of its authority, and has participated in the movement of some LTL lading to this extent. Likewise, Little Audrey's constantly solicits business within the scope of its operating rights, and at present is handling volume meat shipments from its authorized origins from points in such States as Illinois, Missouri, Oklahoma, Kansas, and Indiana to points in Washington and California. These shipments moved to points in the involved western States for further overseas movement as well as directly to military installations

in these States, even though such shipments are not handled on government bills of lading.

Protestants herein are ready, willing and able to perform reliable and expeditious transportation services for the movement of both LTL and truckload shipments with their existing equipment, facilities, and highly trained staff within the scope of their operating authorities. On Page 21 of his statement, the shipper discusses a shipment of "freight of all kinds", without further disclosure of the identity of the lading, from Edwardsville, Illinois to Vallejo, California, which purportedly was handled satisfactorily by applicant, and which the shipper considers could not have been handled satisfactorily by any other existing carrier. Actually, protestants could have handled the movement, to the extent that it included commodities within the scope of their respective authorities, in a through-trailer interline service providing the required 3-day time in transit and a weekend delivery. The shipper's blanket indictment for all currently authorized carriers with respect to times in transit cannot be made applicable to all of those presently authorized carriers, including protestants herein, which have not been favored with any traffic from this shipper to date.

In summary, I would urge the Commission to find that the supporting shipper's current verified statement indicates at best a need for the transportation of Class A and B explosives, and related items, and any grant of authority rewarded the applicant herein be so limited in terms of the commodities authorized to be handled. Certainly, these particular commodities are the only ones specified throughout the shipper's statement as those products for which it is alleging a need for transportation.

I would further urge the Commission to find that applicant has failed to make even a *prima facie* case for that portion of its proposed service involving the transportation of any commodities other than Class A and B explosives

and related items, under the rules annunciated by the Commission concerning the minimum evidence required of applicant for proposals to institute a new and competitive service. See e.g. *Novak—Contract Carrier Application*, 103 M.C.C. 555. Should any grant of authority ultimately awarded to applicant herein encompass any other products than Class A and B explosives, and related items, then such grant clearly should be limited to the handling of non-explosives traffic only when moving in mixed loads with Class A and B explosives and related items in the same vehicle and at the same time. Any other result would be to authorize a new and competitive service to the severe and material detriment of hundreds of carriers in the affected territory including protestants, which have spent millions of dollars in acquiring and developing authorities, equipment and facilities in order to build up a profitable operation within their authorized territories.

I have read the above and foregoing statement, and to the best of my knowledge, the statements contained therein are true and correct.

ARTHUR J. SIBIK
Arthur J. Sibik

Assistant Traffic Manager
Midwest Emery Freight
System, Inc. and Little
Audrey's Transportation Co.,
Inc.

Subscribed and sworn to before me this 5th day of December, 1968.

ROSALIE L. GOLDEN
Notary Public

BEFORE THE INTERSTATE COMMERCE COMMISSION

DOCKET No. MC-129908 TA

In the Matter of:

TEMPORARY AUTHORITY APPLICATION OF
AMERICAN FARM LINES

Motion To Vacate Order and Reject Verified Statement

Comes now Munitions Carriers Conference, Inc., which is protesting this application on behalf of approximately 40 motor carriers of Classes A and B explosives throughout the United States, and respectfully moves the Commission to vacate an Order of Appellate Division 1 entered November 5, 1968 (referred to herein as the November 5 Order) and to reject a document dated November 20, 1968, entitled "Verified Statement of Vincent F. Caputo," and filed by the Judge Advocate General of the Army on behalf of the Department of Defense (hereinafter referred to as the Verified Statement).

STATEMENT

Division 1 granted the authority sought in this proceeding by an Order entered September 3, 1968, which reversed the order of the Temporary Authorities Board and overruled the protests of over 120 motor and rail carriers which indicated that collectively they could perform all of the service proposed. Although numerous petitions for reconsideration of that decision are still pending, Division 1 refused to stay the effectiveness of its order, so that several of the protestants had no choice but to challenge the decision before a Federal District Court, which temporarily restrained the effectiveness of the Division's order. That court action is still pending. To our knowledge, the Commission has made no claim that its decision of September 3, 1968, was not administratively final or that the proceed-

ing was not ripe for judicial review. In the meantime, applicant apparently recognized that the record is legally insufficient to support the Division's grant of temporary authority and on October 17, 1968, it petitioned to reopen the record for the receipt of additional material, principally that contained in a document entitled "Reply to Petitions for Reconsideration," dated October 16, 1968, and filed in this proceeding by the Department of Defense (DOD).

Unlawful Procedure

The November 5 Order does not by its terms grant applicant's petition to reopen, but states that it is an action taken on the Division's own motion as a result of the filing by DOD of the reply described above. The November 5 Order goes beyond applicant's request and grants DOD *carte blanche* to submit not only the material contained in its October 16, 1968, reply, but also any additional matter which it might see fit to produce. It invites DOD to "specify the commodities and points between which there is an immediate and urgent need for applicant's proposed service which cannot be met by existing carriers." Obviously, if such essential information had been contained in the record upon which the Division based its original grant of authority, there would be no present necessity for such specification.

The Commission established in Ex Parte No. MC-67, *Motor Carrier Temporary Authorities,* 98 M.C.C. 483 (1965), a complete written hearing procedure for the disposition of temporary operating authority applications, and having established such regulations, it may not lawfully allow one party to a proceeding to ignore or depart from them. The record, such as it is, was made *before* the Division granted this application, and that grant could not properly have been based upon anything not in the record. This is not a situation where the Commission is

attempting to retract a decision which has been appealed for the purpose of restudying the existing record, reconsidering its decision, and rewriting its opinion. On the contrary, it appears to be an attempt to afford applicant an opportunity, *nunc pro tunc,* to place into a record new evidentiary material which was not in that record when the Division made its determination. In other words, applicant is to be allowed to try to find evidence to support a decision after the decision has been made and even after it has been appealed to a Federal Court. There is no basis in the law for such an action. The Division cannot now recapture this case from the District Court and allow the applicant an opportunity to beef up the record upon which the decision was based. Administrative due process does not permit an agency to make a determination upon an existing record and *thereafter* receive evidence to support that determination. The November 5 Order was in excess of the Commission's authority and should be vacated.

VERIFIED STATEMENT

Original Allegations Abandoned

Although the stated reason for the November 5 Order was that DOD's reply of October 16, 1968, "specified additional reasons indicating an immediate and urgent need for applicant's service which cannot be met by existing carriers," it is highly significant that those alleged reasons are not even mentioned in DOD's Verified Statement filed in response to the November 5 Order. The reply referred to contained only three allegations concerning DOD's alleged need for motor-carrier service. One of those was a complaint which did not identify the originating carrier so that it could be verified. A second allegation was that applicant American Farm Lines had been given "most of the shipments" moving between the Louisiana Army Ammunition Plant at Doyline, La., and Port Chicago, Calif. In protestant's reply and motion to strike, the accuracy of

that statement was challenged. Finally, there was one specific identifiable complaint against existing service in that pleading. The carrier charged replied and submitted photostatic copies of documents which established that the charge was false. By failing to restate and support the allegations of its reply, DOD has in effect abandoned the very allegations upon which the Division acted.

Generalities

Being unable to substantiate those so-called specifications of immediate and urgent need and having abandoned them, the Verified Statement now advances a whole new set of arguments. Again, however, they are primarily generalities, despite the *direction* in the November 5 Order to "specify the commodities and points between which there is an immediate and urgent need for applicant's proposed service which cannot be met by existing carriers." Thus, even if the November 5 Order were proper, this Verified Statement does not comply with it and should also be rejected for that reason. If true, these unsupported generalities still go only to the question of adequacy of existing service and in no way establish, nor is there any specific claim in the Verified Statement that they establish, an immediate and urgent need which cannot be met by existing carriers.

For example, the Verified Statement points out that DOD requires service for the movement of vast quantities of traffic between the involved territories. (pp. 4-6) It states that a "majority" of the available service is joint-line, that "virtually all" authorized carriers operate over regular routes, and that "some" of these carriers use single drivers instead of two-man driving teams. (pp. 7-8) On their face, these are obvious generalities. To say that a "majority" or "some" of existing carriers have alleged defects in their service is not enough to establish a need for new service under section 207, much less to establish an "immediate and urgent need" under section 210a(a).

Moreover, protestant denies that these are true inadequacies in existing service. Contrary to DOD, many of the largest motor carriers of explosives operate over irregular routes. To the extent that explosives carriers lack single-line authority, their joint-line service usually involves interchange of equipment so that the lading can move from origin to destination without transfer. Explosives carriers generally afford two-man driver teams where requested, and many provide such service as a matter of course.

On page 11 of its Verified Statement, DOD makes the astounding claim that there is an immediate and urgent need for applicant's service because no carrier holds single-line authority for *all* commodities (that is, general commodities *without exception*) between *all* points in any of the States sought by applicant. Again, this has nothing to do with the issue of immediate and urgent need, but in addition, the Commission has consistently held that no shipper is automatically entitled to single-line service between all points on all commodities. Although DOD claims that it has been forced to "live with" the existing situation, protestant believes a check of its records would disclose that DOD has over the years accepted the Commission's policy as a sound one and has refused to support numerous applications by motor carriers which would have given it single-line service on various commodities between various points. Now, however, it would have the Commission believe that it belatedly seeks to remedy an untenable situation which has existed for many years by supporting this formerly "exempt" operator. We suggest that some of DOD's earlier submissions in this proceeding were more candid when they admitted that its support is based upon cost considerations and not service.

Considerable is made in the Verified Statement of DOD's use of applicant as a purportedly exempt farm cooperative. The fact that a person has provided unauthorized service,

even though that service included unidentified "transportation niceties" (Verified Statement, p. 19), is no warrant for a finding of immediate and urgent need for the continuation of such unlawful operations in the face of a plethora of existing certificated carriers. Protestant takes vigorous exception to the claim (p. 19) that the unauthorized operations of American Farm Lines were used "to complement rather than replace" certificated carriers. The facts are that American Farm Lines has been DOD's preferred carrier on truckload shipments (it does not have LTL rates on file) and that diversion of traffic from several certificated carriers was established to the satisfaction of the Federal Court which enjoined American Farm Lines' unlawful operations.

No Specifics

To what extent does the Verified Statement "specify" commodities and points as required by the November 5 Order? Protestant has abstracted and lists below each allegation which could conceivably fall into the category of a specific complaint. Examination of these statements makes it clear that the November 5 Order has not been complied with, because they are either not complaints at all or cannot, because of their lack of specificity, be verified or refuted by the carriers involved.

1. Explosives from McAlester, Okla., to Bangor, Wash. (Verified Statement, p. 9) According to the Verified Statement, some such shipments are in transit from six to eleven days. However, third-morning service (which is apparently satisfactory) is admittedly available for such shipments, and it must be assumed that the certificated carrier providing that service is providing an adequate service. This statement is not even a complaint against existing service, and it certainly does not establish by the wildest stretch of the imagination an immediate and urgent need for the certification of a new carrier.

2. Empty shell cases from San Jose, Calif., to Doyline, La. (Verified Statement, p. 9) Again, the Verified Statement admits that some existing carriers provide 72-hour service on such shipments, and in the absence of a claim that such service is unsatisfactory, this statement cannot be construed as a complaint against existing service.

3. Various types of commodities from St. Louis, Mo., to points in California. (Verified Statement, p. 10) It is not true that the "only" certificated service from St. Louis, Mo., is of a regular-route nature. However, it is impossible for the parties or the Commission to know what DOD is talking about when it refers to 'various" commodities, unidentified carriers, and unspecified transit times.

4. Pages 12 through 14 of the Verified Statement list 11 groups of points between which there is allegedly no single-line service authorized to transport "DOD traffic." In the first place, if it is true, the mere absence of a single-line carrier between two points is not a basis for the finding required by section 210a(a). More important here is the fact that the commodities are described as "DOD traffic." This appears to be a device utilized throughout the Verified Statement to gloss over what are essentially inaccurate generalizations. Without checking the thousands of certificates involved, it is fairly safe to assume that there may be no one carrier certificated between various of these points to transport general commodities *without exceptions,* that is, all freight including explosives, commodities in bulk, household goods, etc. "DOD traffic" includes commodities in the latter categories as well as general freight. Thus, the use of the term "DOD traffic" as the basis for these allegations of absence of single-line service may make them technically correct, but they are nevertheless, we submit, very misleading. Protestant is unable to find in the Verified Statement any real support for a claim that a *single* carrier must hold authority to transport all commodities, including the specialized cate-

gories enumerated above. Although there are some exceptions, the Commission has historically restricted the certificates of general commodity carriers against the transportation of certain of these specialized commodities, including explosives and other dangerous articles. See *Classification of Motor Carriers of property,* 2 M.C.C. 703, 713-714 (1937). The Verified Statement makes a half-hearted effort to overcome the historical distinctions among types of carriers by saying that it is "at times desirable" to mix explosives and general freight in the same vehicle. (Verified Statement, pp. 17-18) This may, of course, be true because we do not know what "at times" means. Certainly, a need which develops only "at times" or now and then is not an immediate and urgent need. Moreover, as a general proposition, protestant believes that there is no actual mixing nor any need to mix such freight, and that operational conditions involved in the transportation of explosives, including specially trained drivers, placarding, observance of additional safety regulations, restrictions against the use of certain highways, the necessity for avoidance of congested areas, special equipment in some cases, etc., militate against the mixing of explosives in a load of general freight.

5. Shell cases from San Jose, Calif., to Doyline, La., and Pine Bluff, Ark. (Verified Statement, p. 16) (See also item 2, *supra.*) The Verified Statement alleges that the movement of shell cases must be coordinated with production at the two destinations named and that although "every possible" routing has been used for these movements, only one of the existing carriers is able to provide the "timed" delivery necessary and it is not capable of handling all the traffic. It would seem that simple fairness would dictate identification of this carrier, but this protestant believes it sufficient from its standpoint to point out that the commodity involved is not an explosive.

6. Shipments from St. Louis, Mo., to San Francisco, Calif. (Verified Statement, p. 17) At this point, DOD

says that an unknown number of unidentified carriers have on an unknown number of unspecified occasions failed to provide three-day transit time on shipments of unidentified commodities. This hardly satisfies the requirement that DOD "specify" what it is complaining about.

7. On pages 20 and 21 of the Verified Statement, five instances of purportedly exempt service provided by applicant are given, and it appears that existing service was not tried on these occasions because of some unidentified "experience" of DOD. Only the first of these five movements is identified as involving explosives. (p. 20) It was 22 truckloads of small arms ammunition from Lake City, Mo., to Port Chicago, Calif., and the transit-time requirement was exactly *one month*. Protestant cannot help but be incredulous about a claim that no regulated carrier could provide the equipment and effect delivery within one month, and it submits that no credence should be given this claim in the absence of identification of the regulated carriers to which this movement was supposedly offered and which could not handle it within one month.

Past Admission

Nowhere in the Verified Statement does the current witness for DOD undertake to reconcile its present position of immediate and urgent need with the fact that on two occasions shortly before this application was filed, *i.e.*, on April 30 and May 10, 1968, responsible officials of DOD (one of them being its counsel in this proceeding) addressed letters to applicant itself and to another carrier stating unequivocally that although DOD would like to retain the services of applicant, it "is not in a position to state that there would be insufficient or inadequate service without American Farm Lines." (These letters are appended in their entireties to protestant's original protest to this application.)

WHEREFORE, protestant submits that the law does not permit the reopening of a closed record, after the decision has been appealed to a Federal District Court, for the purpose of allowing the applicant to beef up that record and supply information, previously missing, which could be claimed to support the Division's earlier decision, and, accordingly, the November 5 Order is unlawful and should be vacated; further, the Verified Statement filed by DOD in response to that Order should be rejected for the same reason and also because it fails to comply with the terms of the Order which require specification of any claimed immediate and urgent need for service which existing carriers are not capable of providing.

Respectfully submitted,

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Dated: December 12, 1968

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC 129908 T/A

AMERICAN FARM LINES
Oklahoma City, Oklahoma

Statement in Response to Verified Statement of the Department of Defense Filed as Per Order of Division 1 Served November 5, 1968

Come now the National Motor Freight Traffic Association, Inc., Regular Common Carrier Conference, and Common Carrier Conference—Irregular Route, and files this statement in response to the statement filed by the Department of Defense. (DOD)

I

HISTORY OF APPLICATION

The Temporary Authorities Board, by Order served July 15, 1968, denied American Farm Lines' application to transport general commodities, including classes A and B explosives, moving on government bills of lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah, and Arizona. Applicant filed a petition for reconsideration, and protestants replied thereto. Division 1, acting as an Appellate Division, by order served September 5, 1968, vacated the Board's order and granted the authority as sought. Protestants filed petitions for reconsideration of the Division's grant. As those petitions did not stay the effectiveness of the grant a complaint was filed by certain protestants in the United States District Court, Western District of Washington (*Black Ball Freight Service* v. *United States,* Civil No. 3828, A.D. Washington, October 2, 1968) and the court stayed the effective date of Division 1's order, until further order of the Court.

By Order served October 11, 1968, the Commission stayed the effective date and operation of Division 1's order until further Order of the Commission.

The DOD and American Farm Lines filed replies to protestants' petitions for reconsideration, and the applicant also filed a petition to reopen the record for the purpose of receiving the reply statement of the DOD as part of the evidence.

By Order served November 5, 1968, the Commission, Division 1, acting as an Appellate Division, reopened the proceeding, on its own Motion, for the submission of a verified statement of the DOD and for reply statements from the protestants.

The DOD filed a verified statement on November 20, 1968, and it is to that statement that this reply is directed.

The Order served September 3, 1968, by Division 1 acting as an Appellate Division was the final authorized act which the Commission could take with regard to the instant application, and as such, Division 1 was foreclosed from further action on this matter. The rules governing the procedure are quite clear:

> *49 C.F.R. 1131.4(a)(1)* states that an application for temporary authority is to be processed initially by either the Temporary Authorities Board or by Division 1, acting initially.
>
> *49 C.F.R. 1131.6* states that Petitions for Reconsideration of orders of (1) temporary authorities board, and (2) Division 1 initially may be filed by any person. The only appropriate appellate procedure is a Petition for Reconsideration which would be assigned to Division 1, acting as an appellate division.
>
> *49 C.F.R. 1100.101(a)(2)* states that all decisions, orders, or requirements of a division of the Commission in any proceeding shall be considered administratively

final. It was clearly stated in *Trans American Freight Lines Inc.* v. *United States*, 258 F. Supp. 910:

> "In all instances when an application to reconsider the decision of either a division, individual Commission, or Board was filed with and acted upon by an *appellate division*, its decision was final and no further relief within the Commission was possible."

The rules are quite clear and free from any and all ambiguity. There is no provision in the regulations which allows the admission of evidence in a temporary authorities procedure, after the initial decision by the Temporary Authorities Board. The November 5, 1968, order is, therefore, outside the power and jurisdiction of the Commission.

There are numerous motions on file to vacate and set aside the Order of Division 1, acting as an Appellate Division, served November 5, 1968, and these Motions should have been acted upon before making it necessary for protestants to file replies to this improper and wholly unauthorized Verified Statement of the DOD.

II

Reply of National Motor Freight Traffic Association Inc., Regular Common Carrier Conference, and Common Carrier Conference—Irregular Route, Hereinafter Called "Associations."

At the outset we find that Mr. Caputo feels he is charged with the duties and responsibility for the efficient and economical operation of physical distribution activities of the DOD. He has neglected to state how long he has had these duties and responsibilities; therefore, we must judge his experience and knowledge of these duties by the matters and "facts" he purports to set out. One who has the duties and responsibilities that Mr. Caputo has surely should have an extremely comprehensive knowledge of all common carriers available to him plus knowledge of

any other carriers who might be available to him. Yet, as we read on page 18 of Mr. Caputo's statement:

> ". . . . in the latter part of 1966 when a number of cooperative agricultural associations, including American Farm Lines, made themselves known to Department of Defense and began soliciting its traffic for movement pursuant to the exemption from economic regulation provided by Section 203(b)(5) of the Interstate Commerce Act."

Section 203(b)(5) of the Interstate Commerce Act (49 U.S.C.A. 303(b)(5)) has been in its present amended form since December 17, 1963. Yet, Mr. Caputo, whose duties and responsibilities are the efficient and economical distribution activities of the DOD was not aware of this section until someone called it to his attention in the latter part of 1966. One must wonder what other services and carriers are available to the DOD that Mr. Caputo knows nothing of.

This is an application that is to be determined on the basis of an "urgent and immediate need." There can be no showing of any need unless the existing services have been found wanting, and here the supporting shipper does not even know who the existing carriers are. It is well established that the duty to locate existing carriers is on the supporting shipper. In *Warren Transport Inc. Common Carrier Application* 69 M.C.C. 241, Division 1 stated as follows:

> "Applicant argues that the failure of carriers to seek out the shippers and offer their services indicates their indifference and lack of interest in the shippers' traffic. We do not agree. We have consistently stated that it is the duty of shippers to *inform themselves* of existing service, before seeking additional motor-carrier authorization."

On page 2 of Mr. Caputo's statement he says that his statement is submitted in response to the Order served November 5, 1968, wherein this statement appears:

> ". . . . for the purpose of receiving a verified statement from the Department of Defense which shall, to the extent the national defense and security permit disclosure, specify the commodities and points between which there is an immediate and urgent need for applicant's proposed service which cannot be met by existing carriers."

The DOD statement falls woefully short of meeting the requirements of the Order of November 5, 1968. Nothing in this statement can be construed as evidence of "service which cannot be met by existing carriers." Nowhere in this statement do we find any specific references to the inability of carriers to provide service. Granted that national defense and security must be safeguarded, however, there would be no detrimental effect on national defense if the DOD had specifically named the carriers who failed to provide the needed service, the dates such instances occurred and the injury the DOD sustained thereby.

Look at some of Mr. Caputo's examples:

On page 7, paragraph "1" we find a lengthy discourse on "time in transit" comparing joint line and single line service. The comparison is interesting; however, it is not supported with any concrete facts. This is no more than Mr. Caputo's opinion, which is not based on any foundation as to either his qualifications to render this opinion, or any specific facts as to carriers, numbers of carriers, dates, origins and destinations. This paragraph is meaningless.

It is interesting to note that he talks about a "majority" and a "substantial part" of the certificated carriers available to him provide joint line service. Which, of course, means that there are carriers available to him that pres-

ently provide the single line service he claims he needs. This is what the protestants also claim.

Paragraph "2" on page 7 refers to "virtually all" carriers available to him are regular route carriers. We still must conclude from his statement that there are some irregular route carriers available to him. Again, since he fails to specifically state names, dates, origins and destinations, and commodities, there is no way to conclude that he needs one more irregular route carrier, These facts are known to him, or should be, if he is discharging his duties and responsibilities as Director of Transportation for the DOD.

Note paragraph "3" on page 8 where Mr. Caputo now refers to "some" carriers using single drivers rather than two-man teams. How many are "some"? Mr. Caputo goes on to say that he "understands" that "some" of these carriers do not qualify or license their power units in all states through which they operate. This statement then prompts these questions:

What is the basis for his understanding?

What do you mean by "some"?

How many?

Who are they?

Further, in this same paragraph it is stated that "sometimes" this situation results in delays. Again, there is nothing specific. If this actually has happened they know about it or should have known.

The statement also refers to the "myriad of other inevitable snags" that "seem" to occur. What are they? Do they really occur or only "seem" to?

This entire paragraph is totally unworthy of the slightest consideration in an application where the prime consideration is "urgent and immediate need which cannot be met by existing carriers." The proof must consist of specific facts that would allow the Commission to make a deter-

mination. To this point this statement has not met the requisite burden of proof.

The DOD now sets forth what they categorize as "clearly disclosed" examples:

Paragraph "1" on page 9 of this statement refers to differences in transit time between joint line and single line service. They remain consistent in that they neglect to support this statement with any facts. This is an unsupported self-serving conclusion. This isn't factual evidence.

Paragraph "2" on page 9 again fails to specifically state who provided the transportation; when it was transported; what the shipping instructions were; what routes were travelled; and what the shipping requirements were.

Paragraph "3" on page 9 refers to the "only known" certificated carrier service available for this movement. Since the carrier is not named, how do we know who the DOD is referring to? Is this the "only known" carrier to them? Again, the only conclusion that can be drawn is that the DOD doesn't know.

The DOD then goes on to refer to "some" instances, while in "other" instances certain types of service are available. There isn't a single specific factual instance recited to support this general conclusion drawn by Mr. Caputo of the DOD.

The three "examples" supposedly cited by Mr. Caputo as being "clearly disclosed" are in fact nothing more than general self-serving conclusions which are wholly inadmissible as evidence of either "urgent and immediate need," on service that cannot be met by existing carriers.

Mr. Caputo continues to generalize the services of the existing carriers with such statements as:

> "... inherently inefficient" and "inefficient because it does not permit the provision of transportation

service that is fully possible and practical under proven techniques." (last paragraph on page 10 of Mr. Caputo's statement).

Rather than spell out the inefficiences or or what is possible or practical under proven techniques with factual and specific instances, Mr. Caputo merely complains that DOD has been forced to "live with" this situation.

If the situation is as Mr. Caputo concludes that it is, one wonders why he did not seek out the applicant before the applicant came to him, and why the DOD has not made any effort to support any of the existing carriers, or any other carriers, for this authority. How long has this situation been going on? If this "urgent and immediate" need did not exist before the applicant arrived on the scene (if it had the DOD surely would have made some attempt to satisfy their need—which it did not do.) then the "urgent and immediate" need does not exist today.

These are not the hopes, desires, or conclusions drawn by the protestants, these are the only conclusions that can be drawn by reading and digesting the purported supporting statement of the DOD.

In further examination of this statement we find on the bottom of page 11 (the last sentence) that to Mr. Caputo's knowledge no carrier holds authority to provide single line service from many of the origin points to the destination points. On pages 12 through 14 he cites examples where this "deplorable situation" exists. Yet, nowhere in this "supporting" statement do we find any evidence that traffic actually moves from these origin points to these destinations. Nowhere is there any evidence that any carrier was ever called upon to move any traffic between these points. Nowhere is there any basis for Mr. Caputo to categorize joint line service generally as a "deplorable situation." This conclusion, if it actually exists, is one

to be drawn by the Commission from the evidence presented to it. Mr. Caputo's generalizations are not entitled to any weight as evidence.

On page 15 the statement now talks about Mr. Caputo's responsibilities to conduct DOD's functions in an efficient and economical manner. This responsibility has been "effectively subverted" since he has to depend upon motor carrier service that is presently available to him. This is the same argument that has been used throughout his statement. The only difference here is the use of another hackneyed expression. This added twist to the same argument still fails to be supported by any specific facts. The DOD appears to be at odds with the National Transportation Policy since all existing carriers have obtained their certified authority under that Policy which specifically fosters sound economic and efficient transportation for the shipping public. If the Commission accepts the DOD's statement as a *credena,* then the entire National Transportation Policy must be held for naught.

Since the DOD refuses to disclose what the specific facts are regarding the "times in transit", it is impossible to accept their conclusion that they are "unduly excessive" and therefore result in higher costs to the taxpayers. (page 15 of the supporting statement)

In the second paragraph on page 15 we find that the DOD is supporting the applicant to assure that the Government's reasonable transportation requirements are met. So far, all we know about the Government's transportation requirements is that they have transported a certain quantity of commodities between points. We have not learned from this statement the volume of traffic between any specific points. We have not learned of any requirements of time on specific shipments between specific points other than that the DOD wants the traffic moved within certain time limits. We cannot conclude from the facts presented that the service already available is anything but reasonable.

Mr. Caputo also tells us in his statement that the available service is reasonable since they support the applicant to "assure" that the Government's reasonable transportation requirements are met. The word "assure" means: to make safe; to give confidence to. It is obvious, therefore, that the DOD is already receiving reasonable service and that they feel that another carrier will mean that the reasonable service will continue. We must conclude, however, that since they are already getting reasonable service that another carrier is not needed.

> "The shippers expressed desire for a stand-by service to provide for possible inability of the carrier ordinarily utilized is not a proper basis for a grant of additional authority in absence of evidence demonstrating a genuine need for more than one service." (*C & H Transportation Co. Inc.—Extension Silos* 98 M.C.C. 285)

Turning now to page 18 of the statement we find reference to "service failures" that require additional motor carrier service be made available for movement of DOD traffic. This "concrete example" merely makes a generalization that there was failure on the part of carrier to make a promised three-day transit time. No mention is made of when this took place, who the carrier was, or anything specific about the shipment. If this took place during the time that the applicant was providing services for the DOD, it might have been performed by the applicant.

On page 18 of the statement, in the first full paragraph, Mr. Caputo states that he has demonstrated that the currently certificated carriers services do not meet the DOD's requirements. The obvious conclusion remains the same, that is, you can only demonstrate inadequacies by factual evidence. This has not been done, therefore, merely rehashing the same tired argument over and over again does not take the place of evidence.

Mr. Caputo now enters into a discourse on the service provided by the applicant, on pages 20 and 21 of his statement. The protestants will concede that probably the services of the applicant were satisfactory. The protestants strongly deny, however, that this provides any evidence that the existing services were inadequate. In paragraph "1" on page 20, the statement is made that no certificated carrier could provide the service the applicant performed. How does the DOD reach this conclusion? Who did they call? Why wasn't it specified what efforts were made to obtain the services of regulated carriers? This is one more, of many, unfounded assumptions and conclusions.

In paragraph "2" he talks about his experience with regulated carriers. Nothing in this entire statement shows that he had any experience, of any kind, with regulated carriers. It is not a violation of national defense to name the carrier who failed to provide a service. Yet, when it comes to facts, Mr. Caputo prefers to remain silent.

In paragraphs "3", "4", and "5" he reports the same story that certificated carriers could not meet the requirements. The specific facts are again omitted.

In considering the entire statement of the DOD, it is impossible to find anything that would lead anyone to believe that the existing carrier services cannot satisfy this shipper's needs. There are many conclusions to that effect, but not one shred of evidence to support those conclusions. It is clear, therefore, that the existing carriers can meet the needs of the shipper.

Next we turn to the question of whether or not there is an "urgent and immediate need." The DOD statement tells us about the various pounds of traffic they must transport from various points. A claim is made that the DOD required service to transport 1,900,000 pounds of freight between August of 1967, and June of 1968. This is a siz-

able amount of traffic, however, as far as establishing an "urgent and immediate need" is concerned, there must be some evidence to the fact that this represents an unusual increase in traffic over a similar period in the past. At least we should have some comparison regarding the amount of the traffic and the number of carriers available to the DOD over a certain period of time so that we can draw some conclusion regarding this shipper's need. Unfortunately no such evidence is furnished.

On page 6 of Mr. Caputo's statement he says that the traffic (tremendous volume), in part, must be moved in the most expeditious manner possible. What he neglects to say is what part of this traffic must be so moved, and from where to where. There isn't even the slightest reference as to either of these important elements nor is there any showing as to why this becomes necessary, if it does.

On page 16 of his statement, Mr. Caputo says that certain incoming shipments are fed directly into the production line from the delivery vehicle. This statement was apparently designed in attempt to show that expeditious service is needed. Overlook, for the moment, that there is no showing that the existing carriers failed to perform this service, but look at Mr. Caputo's duties and responsibilities. He is the Director for Transportation and Warehousing Policy. His duty is to maintain an efficient and economical operation for physical distribution activities of the DOD. One wonders why, if the service of the existing carriers has created the "deplorable situation," that Mr. Caputo says it has, feeding a production line from the delivery vehicle is the most efficient and economical manner possible. There is such an inconsistency here, and throughout the entire statement, that it is impossible to form any intelligent conclusion.

Mr. Caputo is moved by his feelings, rather than by facts, in drawing his conclusions. On page 15 of his state-

ment he *feels* that the quantity of freight is so vast that another carrier is needed. This point is not worthy of a response since the Commission is not influenced by a supporting shipper's feelings. The Commission relies on factual evidence in making their findings.

Along the same line Mr. Caputo, on page 19, wants the Commission to find that an "urgent and immediate need" exists because Mr. Caputo *feels* that the applicant's service is superior to some carriers he has used. No mention, again, is made to any specific carrier. Is this evidence of need? Certainly not.

DOD is supporting this application for authority to perform transportation services that the DOD was utilizing prior to the time that the United States District Court for the Western District of Oklahoma, (*Munitions Carriers Conference Inc., et al.* v. *American Farm Lines,* Civil No. 67-487) found said services to be illegal. Was the most efficient and economic manner of transportation, illegal transportation? Is it impossible for the DOD to function by using legal, certificated carriers?

Further, the DOD, in their statement, tells us that the service of the applicant will be used to complement, rather than replace, the service available from other carriers. (See page 19 of the Statement). If this is true, where is the need for the applicant? On page 22 of the statement we find that it is Mr. Caputo's opinion that a grant of authority to the applicant would have no adverse affect on the existing carriers . In about a year and one half the applicant transported 74,155,685 pounds of freight for the DOD (page 19 of the Statement) that legally should have been tendered to a certificated carrier. Can anyone say that the loss of this much traffic in this period of time could be considered as anything other than an "adverse affect?"

In summing up the statement of the DOD in support of the application herein, we find that it is replete with opin-

ions, feelings, and illogical and wholly unsupported conclusions. It does not sustain the burden of showing:

> "an urgent and immediate need for services which cannot be met by existing carriers."

It is worthy of a note that the granting of the authority applied for by the applicant herein would create a situation that is inconsistent with the public interest and the National Transportation Policy. The granting of this authority would put the applicant in the position of wearing three hats at the same time, for example:

1. The applicant would be a common carrier subject to all the rules and regulations of the Interstate Commerce Commission including maintaining a uniform system of accounts, records, filing of required reports, rates, tariffs, etc.

2. The applicant would be a cooperative association exempted from the operation of law under 49 U.S.C.A. 303(b)(5).

3. The applicant would be entitled to perform transportation services for nonmembers, for hire, not to exceed 15% of its total interstate tonnage.

The problem that immediately appears at the surface is what hat, at any given time, will the applicant be wearing?

We find in Section 210 of the Interstate Commerce Act (49 U.S.C.A. 310) a prohibition against any person from holding both a permit as a contract carrier and a certificate as a common carrier for the transportation of property by motor vehicle over the same route or within the same territory unless, for good cause shown, the Commission shall find that both a certificate and a permit may be so held consistently with the public interest and the National Transportation Policy.

The Commission has stated that this prohibition is in recognition of the opportunity for discriminatory practices which are present when a carrier is authorized to offer both kinds of service to shippers. Such discrimination would include the ability of the shipper to obtain special treatment on his contract carrier traffic by assuring the dual carrier of certain traffic for transportation in common carrier service; the ability of the dual carrier to obtain an undue advantage over competing common carriers by giving the shipper special treatment in contract operations; and ability of the dual carrier to accomplish what amounts to a rebate of part of its common carrier charges by agreeing to contract charges lower than it would otherwise accept. See *Yale Transportation Corp.* v. *United States,* 185 F. Supp. 96.

Contrast the above with the situation the instant application presents. In the instant application we would not have a dual carrier, we would have a threefold carrier. The discriminatory practices hereinbefore cited would not only be a possibility but they would be propagated. It is conceivable that any transportation service performed could include a partial common carrier shipment, a partial exempt commodity member shipment, and a partial nonmember (15%) shipment. Would the Commission be able to adequately regulate this carrier? We think not.

III

Conclusion

In this response, an effort has been made to follow the Order of Division 1, acting as an Appellate Division, served November 5, 1968. This response being so made is not intended to admit the proper issuance of said Order, rather the protestants steadfastly hold that this Order is served without the sanction of general rules of practice and procedure of the Interstate Commerce Commission.

The Order, however, did state, as its purpose, the receipt of a verified statement from the DOD specifying the commodities and points between which there is an immediate and urgent need for applicant's proposed service which cannot be met by existing carriers.

The response of this protestant shows that the statement of the DOD has failed to sustain its burden of establishing through factual evidence that there exists an immediate and urgent need for the applicant's services. No showing was made that the existing carriers could not provide the services needed.

The eleven essential elements of a supporting shipper's statement are set forth in the special rules of practice for filing applications for temporary authority (49 C.F.R. 1131.2(c)). The supporting statement of the DOD does not meet these minimum requirements in spite of the fact that the language of that section is quite clear:

> "Any such supporting statement must contain at least the following information."
>
> (The eleven elements are then listed)

The only exemption that the DOD can take advantage of in this section is that when they are the shipper their support may be furnished directly to the Temporary Authorities Board by the Washington office of that department, and that it need not contain a certification of its accuracy or be signed by the person (or an authorized representative thereof) having such immediate and urgent need for motor carrier service. They are not exempt from providing the elements essential to a supporting statement. Having failed to submit "at least" the information specified in 49 C.F.R. 1131.2(c) they have failed to establish that a bona fide need, in fact, exists.

It has also been shown that a grant of authority in this cause would not be consistent with public interest and the

National Transportation Policy, and should be denied for that reason alone.

WHEREFORE, protestants, National Motor Freight Traffic Association, Regular Common Carrier Conference, and Common Carrier Conference—Irregular Route pray that the instant application be denied in its entirety.

Respectfully submitted,

BRYCE REA, JR.
DONALD E. CROSS
1329 E Street, N.W.
Washington, D. C. 20004
Counsel for National Motor Freight Traffic Association Inc., Regular Common Carrier Conference, and Common Carrier Conference—Irregular Route

Of Counsel:

REA, CROSS & KNEBEL
917 Munsey Building
1329 E Street, N.W.
Washington, D. C. 20004

DATED: December 9, 1968

DUE DATE: December 13, 1968

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. MC-129908 TA

AMERICAN FARM LINES

Reply of North American Van Lines, Inc. to the Verified Statement of Vincent F. Caputo

Comes Now Protestant North American Van Lines, Inc. (North American), a carrier certificated in MC-107012 to transport *household goods,* as defined by the Commission, between points in the United States, and files this reply to the verified statement of Vincent F. Caputo.

Applicant seeks temporary authority to transport general commodities without exception. North American urges that if any authority is granted herein that it contain the usual restriction against the transportation of *household goods,* as defined by the Commission.

Mr. Caputo's statement makes reference to a wide range of commodities (pages 5-6). Nowhere in the statement, however, does he mention the transportation of household goods. Neither is there any indication in Applicant's presentation that it has ever transported that commodity for the Department of Defense. Lacking such specific evidence the application should be denied at least to that extent.

There are several dozen carriers available to the Department of Defense to transport household goods on a single-line basis between the points named in this application. For example, North American operates a specialized fleet of 2,579 tractors, 2,714 trailers, and 1,025 straight trucks. It has 318 agents in the involved states. It regularly moves household goods for the Department of Defense; and during the month of April alone transported 132 government shipments with a combined weight of 438,188 lbs. between the points embraced by this application.[1]

[1] For more detailed evidence of North American's services refer to its protest dated June 3, 1968.

Applicant has never moved household goods for the DOD, nor does that agency express any need for Applicant's service. Nevertheless, a grant of temporary authority would permit Applicant to begin diverting traffic from existing carriers under the military's household goods traffic rotation system. Loss of that traffic to North American and other certificated household goods carriers would cause substantial economic harm . In view of the existing and adequate service, that result should not be permitted.[2]

Wherefore, North American prays that the application be denied; or in the alternative, that it be restricted against the transportation of *household goods,* as defined by the Commission.

Respectfully submitted,

NORTH AMERICAN VAN LINES, INC.

By:

MARTIN A. WEISSERT
Its Attorney
P. O. Box 988
Fort Wayne, Indiana 46801

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[2] In Applicant's corresponding permanent application it specifically excludes *household goods,* as defined by the Commission. This is an obvious admission that it is not interested in nor is there any need for its service with respect to that commodity. Any temporary authority granted in this proceeding should therefore embrace no more commodities than requested by the permanent authority application.

BEFORE THE INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-129908 TA

IN THE MATTER OF:

THE APPLICATION OF AMERICAN FARM LINES

Response of Red Ball Motor Freight, Inc., To Verified Statement of Vincent F. Caputo

Comes now RED BALL MOTOR FREIGHT, INC., hereinafter referred to as Red Ball, a protestant in the above proceeding, and files this, its response to the Verified Statement of Vincent F. Caputo dated November 20, 1968.

I.

STATEMENT OF THE CASE

By application filed May 17, 1968, and published in the *Federal Register* of June 8, 1968, at page 8523, American Farm Lines, hereinafter referred to as AFL, seeks authority to operate as a common carrier by motor vehicle, over irregular routes, transporting the following:

> *General commodities including classes A and B explosives,* restricted to traffic moving on Government Bills of Lading
>
> Between points in Arkansas, Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, Oklahoma and Texas, on the one hand, and, on the other, points in Arizona, California, Nevada, Utah and Washington.

Red Ball filed a timely protest to the granting of the temporary authority application, and, by order of the Temporary Authorities Board served July 15, 1968, the application was denied. After the filing of applicant's Petition for Reconsideration and a timely reply to such petition by Red Ball, Division 1, acting as an Appellate Division,

by Order served September 5, 1968, vacated and set aside the order of the Temporary Authorities Board of July 12, 1968, and granted the application for temporary authority for a 90-day period. By order dated November 5, 1968, the Commission, Division 1, acting as an Appellate Division, reopened the proceeding on its own motion for the submission of a verified statement by applicant and any response which might be filed by protestants. This statement is submitted as a response as provided in that Order.

II.

Reaffirmation of the Position of Protestant Red Ball Motor Freight, Inc.

Protestant Red Ball reaffirmed its interest in said application and its position stated in previously filed pleadings herein, including the facts and circumstances set out in its original protest dated June 19, 1968, which is already part of the record herein. The entire operating authority of Red Ball Motor Freight, Inc., is set out in Southwestern Motor Freight Bureau, Inc., Tariff 12-0, MF-ICC 437.

III.

Verified Statement of Vincent F. Caputo Is Not in Compliance With the Commission Rules Pertaining to Temporary Authority

The I.C.C. Rules and Regulations, 49 CFR Sec. 1131.2 (*Filing of Applications for Temporary Authority*) concerning supporting statements enumerate 11 specific items which must be contained in *any* supporting statement. The supporting statement to which this reply is directed has failed to comply with these mandatory requirements. No attempt whatsoever was made to answer 49 CFR Sec. 1131.2 (c), (3) and (8) which require information concerning the past transportation of the traffic involved and the efforts which have been made to obtain service from existing

motor, rail or water carriers, and the dates and results of such efforts.

IV.

The Verified Statement of Vincent F. Caputo Will Not Support the Required Findings for a Grant of Temporary Authority

The above-mentioned statement is so vague and written in such general terms that it cannot support a finding "that there is an immediate and urgent need for the motor carrier service here involved, and that there is no motor carrier service capable of meeting such need". However, throughout the entire statement, the presence of existing service is clearly shown. At page 9, Mr. Caputo makes this statement:

> "... the one carrier now holding a certificate authorizing it to provide a single-line service for movement of such shipments on an irregular route basis consistently effects 'third morning delivery at Bangor, Washington."

At page 9:

> "... delivery is made within 72 hours after dispatch of the shipment from San Jose, Calif., when service is provided on a single-line basis by *carriers* using 2-man driving teams." (Emphasis supplied.)

At page 10:

> "In some instances service is available from (regular route carriers) on a single line basis, while in other instances the only service available is that on a 'joint-line' basis."

Further, the volume figures given at pages 5 and 9 of Mr. Caputo's statement show the extensive service presently available. When converted to a similar basis at 1½ years'

coverage, a simple computation will show that of a total of some 3,109,090,908 (172,727,272 lb./month) transported during the period 12/66 to 6/30/68, American Farm Lines transported 74,155,685 pounds or approximately only 2.4% of the traffic involved, while, on the other hand, existing common carrier service transported approximately 97.6% of the involved traffic or some 3,034,935,223 pounds of freight in the same period. Nothing can more emphatically illustrate the existence of vast amounts of common carrier service presently available to the supporting shipper herein than his own statement showing transportation by present carriers of in excess of *3 billion* pounds of freight. Certainly, the finding that there is no motor carrier service available capable of meeting the needs of the supporting shipper herein cannot be found in the face of these figures, and without such a finding, there is no basis for Section 210a(a) temporary authority.

V.

Desire for Single-Line Service Will Not Justify the Issuance of Temporary Authority

The Interstate Commerce Commission's Rules at 49 CFR Sec. 1131.4(4) specifically provide that the desire for single-line service will not justify the issuance of temporary authority unless it is clearly established that existing carriers are unable to provide service which meets the reasonably immediate and urgent need of the supporting shipper. It is apparent from the statement of Mr. Caputo that this temporary authority application is one seeking to inject one more common carrier into an area where a plethora of common carrier service, both direct and interline, is presently available to the Department of Defense. Certainly this is no basis for the grant of temporary authority.

Applicant herein has not established the legal prerequisites for temporary authority under Section 210a(a) of the Interstate Commerce Act, as amended, 49 USC 310a(a),

(1) that there exists an immediate and urgent need for any of the proposed service, and (2) that there is no carrier service capable of meeting such a need.

Therefore, protestant urges that upon reconsideration, this application should be denied.

Respectfully submitted,

RED BALL MOTOR FREIGHT, INC.

CHARLES D. MATHEWS
President and General Counsel
P. O. Box 47 407
Dallas, Texas 75247

December 10, 1968

BEFORE THE INTERSTATE COMMERCE COMMISSION

DOCKET No. MC-129908 TA

IN THE MATTER OF:
AMERICAN FARM LINES

Verified Statement of Fred S. Anderson

My name is Fred S. Anderson. I reside at 3215 53rd Street, Lubbock, Texas, and I am employed by T.I.M.E. Freight, Inc. as Senior Vice President—Operations. I have been with T.I.M.E. Freight, Inc. (TIME), or its immediate predecessor, for the past 34 years. I am in complete charge of and familiar with all of the operations of the company, including long line, as well as terminal, operations.

I am familiar with the application of American Farm Lines, Docket No. MC 129908 TA, the various pleadings in the case and the various Orders as issued by the Interstate Commerce Commission. I am also familiar with the Commission's Rules and Regulations as to the grants of Temporary Authority, as well as the supporting statements

which must accompany applications submitted to the Commission for Temporary Authority.

The Commission, Division 1, by Order dated November 5, 1968, acting as an Appellate Division, reopened the record for receipt of verified statements on behalf of both the applicant and protestants. December 6, 1968 was set as the date by which protestants may submit verified statements in response to any statement submitted by the applicant. Subsequently, the Commission extended such date to December 13, 1968.

Further, the Order states that the Commission, on reconsideration, will consider the application on the record made, together with such verified statements as may be filed.

TIME, as a protestant in this proceeding, has previously filed its Certificate of Public Convenience and Necessity as issued by the Interstate Commerce Commission in Docket No. MC 35320.

I have read the statement of Vincent F. Caputo submitted on behalf of the Department of Defense in support of the grant of Temporary Authority.

TIME holds authority over regular, as well as irregular routes; its authority is not fragmented. Portions of its irregular authority are found in MC 35320, Sub 77, which reads as follows as found on Sheet 3 under irregular routes:

> General Commodities (With the Usual Exceptions), however, with the authority to transport Class A & B Explosives:
>
> "Between all establishments, installations or premises in California which are actually then in use by the United States Department of Defense, Army, Navy or Air Force, on the one hand, and, on the other, points in California."

TIME holds regular route authority as found in its master certificate in Sub 69 to transport General Commodities (with the usual exceptions), however, with the authority to transport Class A and B Explosives, between Memphis, Tennessee, Little Rock, Arkansas, Tulsa, Oklahoma, Oklahoma City, Oklahoma, Springfield, Missouri, Kansas City, Missouri, St. Louis, Missouri, on the one hand, and, on the other, Los Angeles, California, over regular routes.

As Senior Vice President—Operations, it is my duty to obtain from the Commission alternate authority over the shortest routes possible or practical between all points authorized to be served by the company. It is my belief that TIME has the shortest and fastest routes practical between its points.

The company uses two-man teams on many of its runs. We have spent thousands of dollars in training our personnel to handle expeditiously Classes A & B Explosives, as well as all Government traffic. We maintain spare trailers and spare over-the-road equipment in all of our locations to handle fluctuations in business. When we receive an order for a pickup, we, therefore, have spare trailers and tractors available to make such pickups and do not have to run from hundreds of miles away in order to properly service our accounts. The company owns and operates 490 line-haul tractors and in excess of 1,500 line trailers, all of which, except for a slight minority, are suitable for the needs of the supporting shipper.

We have explosive authority between St. Louis, Missouri, Springfield, Missouri, Joplin, Missouri, Lawton, Oklahoma (Ft. Sill, Oklahoma), Miami, Oklahoma and Tulsa, Oklahoma, on the one hand, and Los Angeles, California on the other. In addition, we hold General Commodity authority (with the usual exceptions), however, not including A & B, between Alton, Illinois, East Alton, Illinois, Granite City, Illinois, Ft. Worth, Texas, Garland, Texas, Carrollton,

Texas, on the one hand, and Los Angeles, California, on the other.

As previously stated, we hold irregular route authority to transport General Commodities between all military installations, on the one hand, and, on the other, points in California.

In addition, as found in our master, certificate, we hold authority between Yuma, Litchfield Park, Phoenix, Goodyear, Tucson and Glendale, Arizona, on the one hand, and, points in Missouri, Oklahoma, Arkansas and Tennessee, as previously set forth.

It is noted that the verified statement of Vincent F. Caputo does not set forth a breakdown as to the number of pounds transported for the Department of Defense as to what part moved by rail, motor carrier, or air.

It is noted that the Department of Defense admits that it is presently obtaining third-morning delivery by a certificated carrier transporting Classes A & B explosives moving from McAlester, Oklahoma to Bangor, Washington. It further admits that it is obtaining 72-hour service on empty shell cases from San Jose, California, to Doyline, Louisiana (Page 9, Verified Statement of Vincent F. Caputo).

The Department of Defense (Page 11, Verified Statement of Vincent F. Caputo) states that it is unable to find a single carrier that is authorized to provide service on a single-line basis from many of the Midwest, Southern and Southwestern states involved here to all points in the State of California. As previously pointed out, TIME has a great deal of coverage in the Midwest, Southern and Southwestern states direct to all points in California.

TIME serves McAlester, Oklahoma, via a connecting line from McAlester to Tulsa to all points in California and many points in Arizona. The equipment is furnished by TIME to such carriers as Express Carrier and Rocket. It

is my experience that these connecting carriers tender TIME the trailer on the same date as the lading is picked up at the Naval Ammunition Depot at McAlester, Oklahoma.

On Page 12, Verified Statement of Vincent F. Caputo, it is stated that the Department of Defense does not know of any carrier authorized to transport DOD traffic in single-line service from Rogers, Arkansas, to *any* point in California. TIME holds authority to transport DOD traffic in single-line service from Rogers, Arkansas, to *all* DOD points in California.

On Page 13 it is stated that the DOD know of no carriers authorized to provide single-line service for movements of DOD traffic from Sacramento Army Depot, Sacramento, California, to Ft. Sill, Oklahoma. TIME has authority to perform such single-line service.

On Page 14 it is stated that there is no known carrier authorized to provide single-line service for movements of DOD traffic from Twenty-Nine Palms, California, to Ft. Sill, Oklahoma, or to Fort Leonard Wood, Missouri. TIME has authority to perform the foregoing on a single-line service. Such authority to serve Ft. Sill, Oklahoma, which is in the Commercial Zone of Lawton, is found in the master portion of MC 35320, Route 23. Its authority to serve Fort Leonard Wood, Missouri, is found in Sub 69 of its certificate.

On Page 14 it is further stated that the DOD knows of no carrier authorized to provide single-line service for movements of DOD traffic from Tracy Defense Depot, Loyth, California, to Oklahoma City, Oklahoma. TIME holds such authority.

Applicant's supporting statement refers to use of the Department of Defense of American Farm Lines for various movements, however, it does not state that it cannot presently use the services of American Farm Lines now

or after January 1, 1969 as a farm coop without the necessity of an issuance of a certificate by the Commission.

As previously stated, I am familiar with the Rules and Regulations of the Commission as to grants of Temporary Authority. The Rules and Regulations of the Commission, Section 1131.2 (c) state in part:

> "Any such supporting statement must contain at least the following information:
>
> " . . .
>
> "(8) Whether efforts have been made to obtain the service from existing motor, rail or water carriers, and the dates and results of such efforts.
>
> "(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal."

I am unable to find in any of the applicant's supporting statements the efforts that have been made to obtain the service from existing carriers and the dates and results of such efforts, nor the names and addresses of existing carriers who have either failed or refused to provide service, nor the reasons given for any such failure or refusal.

In the territory in which protestants operate, I believe the protestants can meet the reasonable requirements of the supporting shipper. TIME has not received any serious complaints from the Department of Transportation nor has it failed or refused to provide adequate transportation to meet the Department's when needs called upon. We regularly solicit traffic from DOD and this traffic amounts to approximately 14% of our total revenue.

FRED S. ANDERSON
Fred S. Anderson,
Senior Vice President—Operations

VERIFICATION

STATE OF TEXAS
COUNTY OF LUBBOCK

Fred S. Anderson, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

FRED S. ANDERSON
Fred S. Anderson

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public in and for Lubbock County, Texas, this the 11th day of December, 1968.

MARY MILLS
Notary Public,
Lubbock County, Texas

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC-129908 TA

In the Matter of the Application:

AMERICAN FARM LINES
TEMPORARY AUTHORITY APPLICATION

Verified Statement of Jerome Biniasz of Transcon Lines

My name is Jerome Biniasz and my business address is 1206 South Maple Avenue, Los Angeles, California. I am employed by Transcon Lines in the capacity of Chief, Commerce, which position I have held since July, 1966. Prior to that date, I was employed by Kramer-Consolidated Freight Lines, Inc. as Assistant Director of Traffic and I had been with Kramer-Consolidated Freight Lines, Inc. since 1956. During the time I was connected with Kramer-Consolidated Freight Lines, Inc., I participated in various activities of the Company, including traffic, operations,

sales, and the handling of matters before the Interstate Commerce Commission and the various state regulatory agencies. Kramer-Consolidated Freight Lines, Inc. was purchased by Transcon Lines as of July 1, 1966, and I was immediately employed by Transcon Lines after the consummation of its purchase of Kramer-Consolidated Freight Lines, Inc. My duties with Transcon Lines have been essentially the same as those in which I participated when I was employed by Kramer-Consolidated Freight Lines, Inc.

As a part of my duties with Transcon Lines, I am familiar with the financial affairs of that Company and financial statements come to me each accounting period. My immediate supervisor is the Senior Vice President, Finance. I have become familiar with the operations of Transcon Lines, with the General Office of Transcon Lines and with the operations of the Company and facilities encompassed within these applications.

Transcon Lines, hereinafter referred to as Transcon or protestant, is a certificated motor common carrier operating under and by virtue of Certificate of Public Convenience and Necessity No. MC-110325 and subs thereunder. This certificate authorizes the transportation of general commodities, with the usual exceptions, between points, among others, in California and Arizona on the one hand, and on the other, points in Indiana, Illinois, Missouri, Arkansas, Texas, Oklahoma and Kansas in direct single-line service over regular routes.

I have read the statement submitted by Vincent F. Caputo and, in response to the points listed on Pages 3 and 4 of that statement, submit that Transcon has authority to serve the following points as either origins or destinations: St. Louis, Missouri; McAlester, El Reno, Oklahoma City and Tulsa, Oklahoma; Pine Bluff, Arkansas; Indianapolis, Indiana; Alton, East Alton and Granite City, Illinois; Fort Worth, Dallas, Garland and Carrollton, Texas; Atchison, Parsons and Wichita, Kansas; Los Angeles, Oakland, El

Segundo, La Mirada, San Jose, Santa Clara, Vernon, El Monte, Culver City, Seal Beach, Burbank and Long Beach, California; Phoenix, Tuscon and Glendale, Arizona. Protestant is able to serve numerous points throughout the midwestern, southern and southwestern states.

Protestant maintains full staffed terminals in the following locations, which are within the scope of authority being sought by American Farm Lines in MC-129908-TA: San Francisco and Los Angeles, California; Phoenix and Tucson, Arizona; Indianapolis, Indiana; Chicago, Danville and Springfield, Illinois; Kansas City and St. Louis, Missouri; Little Rock, Arkansas; Amarillo, Dallas and Houston, Texas; Oklahoma City, Ponca City and Tulsa, Oklahoma; and Wichita, Kansas.

Transcon operates approximately 713 tractors and in excess of 1,900 trailers, all of which equipment is designed and constructed for the purpose of transporting the type of commodities involved in the instant application. In addition to the over-the-road equipment, Transcon operates 350 Pickup and Delivery Tractors, 512 Pickup and Delivery Trucks, and 113 Pickup and Delivery Trailers. A considerable amount of the equipment is stationed at the terminals listed above. Additionally, each of the terminals has a number of the Line-Haul trailers in a pool for the picking up of volume or truckload shipments.

Contrary to the statements of Mr. Caputo, Transcon Lines, a regular route common carrier, does operate "two-man driving teams" on all traffic between points in California and Arizona on the one hand, and on the other, points in Indiana, Illinois, Missouri, Arkansas, Texas, Oklahoma and Kansas. All of the equipment utilized to transport such shipments is "qualified" or "licensed" in all the states involved so that no delay is encountered to await properly "qualified" or "licensed" equipment, as we are given to believe in Mr. Caputo's statement.

Mr. Caputo's statements on Pages 12, 13 and 14 are erroneous in that Transcon does possess the necessary authority to transport general commodities between Pine Bluff, Arkansas, and points in California and Arizona. Likewise, Transcon Lines does possess authority from Parsons, Kansas, to points in California and Arizona. Additionally, protestant possesses authority from San Jose or Santa Clara, California, to Pine Bluff, Arkansas, and from Vernon, California, to Pine Bluff, Arkansas. Thus, in each of the instances shown above, Mr. Caputo's information is incorrect and fails to advise if such movements actually have moved within any definitive period of time or are singly possible moves.

On Page 10 of Mr. Caputo's statement, we are told that the irregular route carriers are capable of performing service at approximately one-half the transit time of the regular route carriers. Transcon submits that the statement is an impossibility and with complete disregard to the safety of the general public over any possible combination of routes which the carrier may operate. Transcon Lines offers to the general public third-morning delivery between the Los Angeles, California area, and St. Louis, Missouri. To say the irregular route carriers are capable of performing the same service in approximately one and one-half days is humanly impossible. The short line mileage between St. Louis, Missouri, and Los Angeles, California, is 1,841 miles which if driven in thirty-six (36) hours, would require an average speed of 51.1 miles per hour. To attain the average speed and maintain it may only be done with complete disregard for the safety of other vehicles traveling over the same route. This statement appears to contradict the statement on Page 7 in paragraph numbered one (1) wherein Mr. Caputo states that, "... by use of 'two-man' driving teams generally can be relied upon to consistently provide delivery within a transit time computed by allowing eight (8) hours for each 300 'short line' miles involved." Using this as a standard, the shipments between St. Louis

and Los Angeles would require approximately fifty-one (51) hours or fifteen (15) hours over and above that which we are led to believe occurs by conducting operations over irregular routes between the same two points.

It is submitted that Mr. Caputo's statement is deficient in that although tonnage figures are shown, it is also indicated that this tonnage moved by rail or motor vehicle and by aircraft without designating which mode was predominant or the percentage of traffic carried by each mode. It is only with this information and the tonnage handled by applicant for the same period that it can be shown that the tonnage being diverted to applicant is substantial, rather than minuscule, as we are led to believe.

The inconsistency of using different periods to show service requirements and that of the applicant is further distorted on Pages 20 and 21 wherein examples of the excellence of applicant's service is shown. The first example of August 30, 1968, and the fifth example of April 20, 1967, do not relate themselves to the time period shown on Page 2 showing transportation service required. However, it is interesting to note that with an injunction outstanding against the applicant, the Department of Defense tendered 22 truckloads to American Farm Lines to be picked up on one day and delivered all on one day. We are not informed whether these truckloads all moved in conformity with regulations involving movements by a Cooperative Association or that they were in compliance with the injunction against the carrier.

On Page 11 of Department of Defense's statement, we are advised that there is not a single carrier capable of providing a single line service between the midwestern, southern and southwestern states on the one hand, and on the other, all points in any of the five involved western states. However, nowhere in the statement is it explained why service is required to *all* points at any given time as specific points are named as typical origins and destinations.

It should be noted that in the Reply to Petition For Reconsideration, filed by Curtis L. Wagner on October 16, 1968, the prevalent theme of the statement was the monetary savings to the Government by utilizing the service of American Farm Lines. Whereas, the statement of Mr. Caputo states that by having to use carriers holding "bits pieces" of authority precludes the rendering of expeditious service, is inherently inefficient and thus subverts efforts to establish the most economical and efficient distribution system. The inference is thus made that a nominal savings can be incurred by utilizing irregular route carriers. Is this variance in statements due to the fact that the "Reply" is contrary to Chapter 105 of the *Military Traffic Management Regulations*? Paragraph 1050026 thereof provides:

> "Applications for operating rights will not be supported when the effect is simply to provide additional service; or to provide a large number of participating carriers; or to provide single-line service when adequate interline service exists; or to provide lower rates."

Or, is there variance best explained in that this Commission will not entertain an application for authority when in effect it is a rate matter, rather than a need for additional service?

The statement of Mr. Caputo supports the application in its entirety which is for both less than truckload and truckload authority. It should be pointed out here that the record will reveal that American Farm Lines, in compliance with the Commission's order of September 3, 1968, filed its Tariff MF—I.C.C. No. 1, which published rates only on minimum weights of 38,000 and 30,000 pounds, respectively. American Farm Lines, thus by its own publication, limited the scope of its authority granted to it. The effect of its publication was to place an unauthorized embargo on all shipments below the weight categories shown above. This

tariff publication, although ultimately rejected and returned to the proponent, did show that American Farm Lines did not intend to perform the complete service for which it was being supported.

Transcon Lines has never been appraised by the Department of Defense that its service has been inadequate or that the Department desired Transcon to seek additional authority to expedite military shipments or to provide a more complete service. It is submitted that there is adequate service available to meet the needs of the Department of Defense.

Respectfully submitted,

JEROME BINIASZ
Jerome Biniasz

* * *

VERIFICATION

COUNTY OF LOS ANGELES }
STATE OF CALIFORNIA } ss.

JEROME BINIASZ, being first duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

JEROME BINIASZ

Subscribed and sworn to before me, a notary public for the above named state, this 10th day of December, 1968.

MARY LOU WEST

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket MC 129908 TA

AMERICAN FARM LINES

Verified Statement of United-Buckingham Freight Lines, Inc. and Norwalk Truck Lines Inc.

STATEMENT OF THE CASE

This is an application for temporary authority which was announced in the May 28, 1968 issue of the Federal Register page 7796. The applicant is seeking the following common carrier authority by motor vehicles over irregular routes.

> General commodities, including classes A and B explosives, but restricted to traffic moving on Government bills of lading, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas on the one hand, and on the other, points in Washington, California, Nevada and Arizona.

The supporting shipper is the Department of the Army, office of Judge Advocate General, Washington, D. C. 20310.

In accordance with the notice in the Federal Register, protest was filed by United-Buckingham Freight Lines, Inc. and Norwalk Truck Lines Inc. with Mr. C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations in Oklahoma City, Oklahoma.

The Temporary Authorities Board in processing the application denied the application. This was under date of July 12, 1968.

The applicant filed a petition for reconsideration before your Commission to which these protestants filed a reply. Division One, acting as an appellate division, on September

3, 1968 reversed the Temporary Authorities Board and granted the application for temporary authority.

These protestants then timely filed a petition for reconsideration. This petition has not as yet been acted upon.

By order dated November 5, 1968 Division One, acting as an appellate division, issued an order in which they reopened the record for receipt of verified statements on behalf of both the applicant and protestants. December 6, 1968 was set as the date by which protestants may submit verified statements in response to any statement submitted by the applicant.

The order of the Division states that after the protestants have submitted their verified statements, that the Commission on reconsideration would reconsider the application on "the record as made, together with such verified statements as may be filed". In view of the fact that the Commission will give consideration to previous pleadings filed by these protestants, protestants will not further burden the record by repeating information which has already been submitted by them, but would direct your Commission to the information previously submitted by protestant together with information submitted in the original pleading setting forth the authority of the protestants and their ability to provide the involved transportation service.

VERIFIED STATEMENT OF J. MAURICE ANDREN

My name is J. Maurice Andren. I am employed by United-Buckingham Freight Lines, Inc. I have been employed by this company since 1957 and since 1961 have been manager of I. C. C. applications.

My duties require me to collect information from the books and records of United-Buckingham Freight Lines, Inc. and make that information available to regulatory bodies including the Interstate Commerce Commission.

United-Buckingham Freight Lines has authority from your Commission to control Norwalk Truck Lines Inc. and Norwalk Truck Lines Inc. of Delaware. This control was authorized by your Commission in Docket MC-F-9775. Control was accomplished on October 25, 1967.

I am submitting this verified statement on behalf of Norwalk Truck Lines Inc. and United-Buckingham Freight Lines, Inc. protestants in this proceeding.

My duties also require me to collect information from the books and records of Norwalk Truck Lines Inc. and Norwalk Truck Lines Inc. of Delaware and present such information to regulatory bodies.

I filed the original protest on behalf of these two protestants with Mr. C. L. Phillips, District Supervisor of the Interstate Commerce Commission located at Oklahoma City, Oklahoma. I have just re-read this protest and here incorporated in this verified statement the information and statements made in that protest.

I call attention to the fact that in the protest I stated that these protestants were not objecting to the grant of the authority between points in California, Nevada and Arizona on the one hand, and, on the other, Kentucky, Arkansas, Louisiana, Texas and Oklahoma.

I have read the statement of Vincent F. Caputo submitted on behalf of the Department of Defense in support of the grant of temporary authority.

I have noted on pages 3 and 4 the origins and destinations between which the supporting shipper has traffic moving. Of those mentioned, protestant in his Subs 158 and 192 has authority to serve St. Louis, Missouri. Kansas City, Missouri can also be served by protestants in the same Subs and participate in traffic from Lake City, Missouri, which is just outside of Kansas City, Missouri. The same is true with respect to Alton, East Alton and Granite City,

Illinois, which are just outside of St. Louis, Missouri. Sub-158 authorizes protestant to serve Atchison, Parsons, Wichita and Junction City, Kansas. Sub 104 authorizes service to Tacoma, Washington. All of these references are to the authority of United-Buckingham Freight Lines, Inc.

I have noted what the supporting shipper states with respect to their requirements for rush service in order to meet departing ships from the West Coast. These protestants regularly are called upon by the Government to meet schedules such as these and when traffic is tendered to us under those circumstances except for mechanical failure or otherwise uncontrolled factors, protestants have been meeting those schedules. In some instances special efforts are made to meet the schedules. Protestants regularly employ two-man driver teams to provide for the movement of their vehicles and are in a position of expeditiously moving merchandise to meet the supporting shipper's requirements.

I have noted what the supporting shipper has said with respect to carriers that are required to operate over regular routes. Much of the authority of these protestants is required to be over regular routes. However, it would be the unusual situation if these protestants in operating over the regular routes were required to operate over routes that were circuitous to such an extent that it would have an appreciable affect upon the delivery time. Protestants have sought from your Commission and have secured the authority to operate over reasonably direct routes either in the form of grant of original operating authority or in the form of grant of alternate route authority. Reference to my operating authority appendix attached to my original protest will disclose numerous regular route as well as alternate route authorities. Reference to the map that I submitted with by original protest will indicate the extent to which protestants are able to operate over reasonably

direct routes. The arguments advanced by the supporting shipper with respect to regular route operation, in my opinion, do not apply to these protestants.

I have noted the Commission's regulations that the supporting statements shall set forth among other things: "The names and addresses of the existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal." Nowhere in the presentation made by the supporting shipper is any reference made to any service failure or refusal on the part of either of these protestants to provide this service which the supporting shipper needs. In the territory in which protestants operate, I believe the protestants can meet the reasonable requirements of the supporting shipper.

I have noted the comments made by the supporting shipper on pages 17 and 18 in which it describes what might be termed "fragmented authority", of the existing carriers. If existing carriers' authority is inadequate, it is partly the responsibility of the supporting shipper for that situation. These protestants have on numerous occasions contacted the supporting shipper inquiring as to whether or not their existing authorities are adequate to meet the supporting shipper's needs and particularly in the territory in which they operate. Until just recently, the response to these protestants has been that the supporting shipper has adequate service to meet their existing needs. The complete reversal of that position is evident, however, recently in this and other instances in which the supporting shipper has supported carriers for additional operating authority.

J. Maurice Andren

VERIFICATION

STATE OF SOUTH DAKOTA }
COUNTY OF PENNINGTON } ss.

J. Maurice Andren, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

J. MAURICE ANDREN
J. Maurice Andren

Subscribed and sworn to before me this 4th day of December, 1968.

LEONA TOMASSI
Notary Public

My Commission expires
December 8, 1972.

ARGUMENTS

The section of the Interstate Commerce Act which provides the guidelines for the consideration of the instant matter is that set forth in Section 210a(a). This section of the Act reads

> "To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle as the case may be."

The carrying out of these responsibilities by your Commission also includes guidelines set forth in the National Transportation policy enunciated by the Congress. Such policy sets forth the following:

> "It is hereby declared to be the National Transportation policy of the Congress to provide for fair and

impartial regulation of all modes of transportation subject to the provisions of this act, so administered as to recognize and preserve the inherent advantages of each; *to promote safe, adequate, economical, and efficient service and foster sound economic conditions* in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation service, *without* unjust discriminations, undue preferences or advantages, or *unfair or destructive competitive practices;* to cooperate with the several states and the duly authorized officials thereof; to encounter fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a National transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and the National Defense. All of the provisions of this Act shall be administered and enforced with a view of carrying out the above declaration of policy." (Emphasis supplied)

In the opinion of these protestants the fulfillment of the requirements of the Interstate Commerce Act call for the reversal of the previous grant of authority to the American Farm Lines and the denial of the application for temporary authority. In support of these statements, protestants set forth the following arguments.

This is a situation in which existing transportation carriers were called upon and did respond to the needs of the supporting shipper. Approximately two years ago the applicant approached the supporting shipper and began to receive traffic from the supporting shipper. This traffic which the applicant received was traffic which had been previously handled by the existing transportation system and thus the applicant has made inroads upon and taken away from that existing transportation system traffic which

had previously been handled by existing carriers. The statement by the supporting shipper on page 19 that the service of the applicant will be used to complement rather than replace service from the existing carriers thus has not been demonstrated to be correct to your Commission. The supporting shipper has not stated that American Farm Lines is handling new traffic which had not previously existed, but rather it is obvious that the supporting shipper will use the applicant to transport traffic that at one time had been moving by existing carriers.

What will happen is what has happened in the past. That is that the applicant will seek to handle the more desirable type of traffic and leave to existing carriers the responsibility of handling the less desirable type of traffic. The supporting shipper obviously has both less than truckload and truckload traffic available. The applicant in the past has not shown its ability to handle all of the types of traffic of the supporting shipper over the vast territory in which it seeks authority to operate but has instead selected the more desirable type of traffic. This is not the type of a situation which will foster sound economic conditions in the transportation industry.

If the supporting shipper finds that it needs additional transportation service, its solution to the problem is to provide the support for the necessary authority of the existing carriers in the areas in which transportation service is needed.

The operations of the applicant are not unusual. They are the normal type of operations that are employed by these protestants and the industry in general in the movement of its merchandise. To move freight by two-man teams which provide for the constant flow of freight is something that is the regular practice. One needs only to note the equipment on the highways of the United States to note the large amount of two-man team operations that

are being conducted by the existing transportation industry, including these protestants.

Nowhere in the statement of the supporting shipper as required by the Commission's regulations has there been any evidence submitted that these protestants have been unable to meet the needs of the supporting shipper. Yet this is one of the factors which your Commission's regulations require that a supporting shipper present. Without such presentation of facts the applicant and his supporting shipper have failed to meet the requirements of your Commission's regulations and under the present interpretation given the Interstate Commerce Act by the courts, the application must be denied.

In your Commission's order providing for the submission of verified statements, in the first ordering paragraph your Commission required the supporting shipper to submit this information. (This was a qualified requirement that it be presented "to the extent the National Defense and Security will permit disclosure". No contention has been advanced by the supporting shipper that the National Defense and Security did not permit complete disclosure.)

The applicant and its supporting shipper have failed to set forth the necessary facts required by your Commission in order to warrant the grant of temporary authority as sought by the applicant. Under the circumstances, the application should be denied. We therefore urge the Commission on reconsideration to deny the application for temporary authority.

Respectfully submitted,

J. Maurice Andren
J. Maurice Andren

I. C. C. Practitioner for Protestant United-Buckingham Freight Lines, Inc. and Norwalk Truck Lines Inc.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

No. MC-129908 T. A.

AMERICAN FARM LINES
TEMPORARY AUTHORITY APPLICATION

Verified Statement of Eric L. Spitler

I am Eric L. Spitler, Vice President-Traffic and Sales for United Transports, Inc., located at 4900 North Santa Fe, Oklahoma City, Oklahoma.

United Transports, Inc., hereinafter referred to as "United", filed a protest in the original application in this matter dated June 17, 1968, which sets forth our position. A copy of that original protest is attached hereto. The instant statement is made by myself in reply to the statement filed by American Farm Lines, applicant, of Vincent F. Caputo, Director for Transportation and Warehousing Policy of the Department of Defense. That statement was filed by applicant pursuant to the order of the Commission served November 5, 1968, which reopened this matter for the receipt of additional evidence.

United transport automobiles, trucks, tractors, chassis, bodies, and parts thereof, in secondary truckaway movements under Certificates Nos. MC 71902 and subs thereunder. United originally protested this application because of the wide territorial scope involved and the completely unrestricted nature of the commodity descriptions which were requested. As this case has developed, and particularly after the receipt of the statement of Vincent F. Caputo, it seems to become clear that the Department of Defense is interested in the transportation of explosives and general commodities as the term is normally used, and not in the transportation of the commodities which may be transported by United.

On the other hand, while it does not appear that the Department of Defense is seeking additional transportation for those named commodities, the applicant has not offered to restrict the application against the transportation of those commodities. I can only assume, however, that Mr. Caputo is not speaking, in his statement, of automobiles, trucks, tractors, chassis, bodies, and parts thereof, because he makes no statement which relates to such items. All of the statements which he makes relate either to Class A and B explosives or to general commodities as that term is generally used. I have been over the statement of Mr. Caputo completely, and find that he speaks of Class A and B explosives, general commodities, or freight of all kinds, in all instances, except where specific commodities are enumerated on pages 5, 6, 9 and 20 of his statement. In none of these listings does he make any mention of automobiles, trucks, tractors, chassis, bodies or parts thereof.

In its Sub Nos. 35 and 53, United can and does provide single-line service on all the commodities above enumerated between the origin states of Missouri, Oklahoma, Kansas, Texas, and Texarkana, Arkansas, on the one hand, and Arizona, on the other. It can provide interline service from those origin states to points in all the rest of the destination states involved.

If the certificate which is ultimately issued to American Farm Lines by virtue of this application, if any, is restricted against the transportation of automobiles, trucks, tractors, chassis, bodies and parts thereof, the interests of United in this application would be removed. The insertion of such a restriction in any certificate which may be issued is completely warranted because of the matters which I have discussed above, and it is my request that the Commission so restrict any certificate which it may see fit to grant to the applicant pursuant to the reopened hearing in this matter.

ERIC L. SPITLER
Eric L. Spitler

BEFORE THE
INTERSTATE COMMERCE COMMISSION

MC-129908 TA

AMERICAN FARM LINES
TEMPORARY AUTHORITY

Motion to Strike Purported Verified Statement of Vincent F. Caputo

COME Now the Protestant Western Railroads named in the appendix to their joint Protest served June 10, 1968 and, in lieu of filing Verified Statements, move to strike the purported Verified Statement of Vincent F. Caputo served November 20, 1968, and in support of their motion show:

I.

Notwithstanding the pendency of CA-3828, *Black Ball Freight Service, et al* v. *U. S., et al*, in the United States District Court for the Western District of Washington, and notwithstanding the fact that the entire Commission has denied request for a finding of General Transportation Importance, Division 1, acting as an Appellate Division, which had already acted herein, reopened this proceeding for the purpose of receiving and considering a Verified Statement of the Department of Defense and statements of protestants in response thereto. The order reopening the proceeding seemingly presupposes the existence of an immediate and urgent need which cannot be met by existing carriers, for the Department of Defense was authorized to merely "specify the commodities and points between which" such conditions prevail.

Without acquiescing in the propriety and legality of the procedures prescribed herein by Division 1, acting as an Appellate Division, these Protestants move to strike the purported Verified Statement of Vincent F. Caputo.

II.

The above-described Protest pointed out several deficiencies in the original supporting statement determined by the Washington Court to be inadequate. The so-called Verified Statement of Vincent F. Caputo clearly fails to cure at least some of those deficiencies. Said Protest, therefore, is here adopted by reference and reurged.

III.

Whether considered separately, or in concert with the initial supporting statement, the Caputo statement fails to meet the prescribed essential minimum standards and must, therefore, be stricken and given no consideration.

IV.

Under the terms and provisions of Ex Parte No. MC-67, 49 CFR 1131.2, 98 M.C.C. 483, 486, the Commission required that supporting statements contain *at least* the information specified in eleven areas. Four of the categories are:

(3) Volume of traffic involved, frequency of movement, and how transported now and in the past.

(8) Whether efforts have been made to obtain the services from existing motor, rail, or water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for such failure or refusal.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's name, address, and motor carrier docket number, if known, and state whether such application was granted or denied and the date of such action, if known.

Neither the initial nor the Caputo statement shows (a) how the traffic is now moving, (b) whether efforts have been made to obtain the services from existing motor, rail, or water carriers, and the dates and results of such efforts, and (c) the names and addresses of existing carriers which have failed or refused to provide the service, and the reasons given for same. Further, the Caputo statement fails to identify other carriers supported for substantially the same authority, such as Lee Way Motor Freight, Inc. in MC-61440 (Sub 112 TA).

V.

The above rules have the force and effect of statute. They are binding upon the Commission as well as upon the general public. The judiciary will determine that the Commission's waiver or disregard of its own rules is arbitrary and capricious. See *Acme Cartage Co., et al* v. *U. S., et al*, U.S.D.C. Western District of Washington, Southern District, October 4, 1968, — F. Supp. —, 1968, F.C.C. 82,041; *Mississippi Valley Barge Line Co., et al* v. *U. S., et al*, 252 F. Supp. 162; *Columbia Broadcasting System* v. *U. S.*, 316 U.S. 407; *Columbia Broadcasting System* v. *U. S.*, 317 U.S. 422.

VI.

The Commission's responsibility in this regard is not relaxed by the fact that the supporting shipper is the Department of Defense. The only mention of that Department in the rules cited above appears in Rule 1131.2 (c) which, in part, provides that its supporting statement may be furnished directly to the Temporary Authorities Board instead of the appropriate Field Office. And, as pointed out at Pages 2 and 3 of the adopted and reurged Protest of Western Railroads, the Commission itself has held that when supporting applications, a governmental agency stands in the same position as a commercial shipper.

In any event, it could not possibly be claimed in connection with the movements recited in the verified statement that the disclosures required in 3, 8, 9 and 11 above are classified information.

VII.

Irrespective of the correctness and lawfulness of the procedures specified in this matter, the so-called verified statement of Vincent F. Caputo does not supply the minimum information required by the rules promulgated in Ex Parte No. MC-67. This is so whether the statement is considered singly or together with the initial supporting statement.

VIII.

Accordingly, no purpose would be served by the filing of Verified Statements by these Protestants.

WHEREFORE, for the reasons stated in their Protest and in this Motion, Protestant Western Railroads move that the purported verified statement of Vincent F. Caputo be stricken and given no consideration.

Respectfully submitted,

PROTESTANT WESTERN RAILROADS
By:

ED WHITE
280 Union Station
Chicago, Illinois 60606
312/726-6900
Their Attorney

Order

Service Date December 20, 1968

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, Acting as an Appellate Division, held at its office in Washington, D. C. on the 19th day of December 1968.

No. MC-129908 TA

AMERICAN FARM LINES
(Oklahoma City, Okla.)

Upon consideration of the record in the above-entitled proceeding granting to American Farm Lines on September 3, 1968, a 90-day temporary authority to conduct motor common carrier operations and transport general commodities, including Class A and B explosives, moving on a Government bill of lading, over irregular routes, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and, on the other, points in Arizona, California, Nevada, Utah and Washington and (1) the entry of a temporary restraining order on October 3, 1968, by the United States District Court for the Western District of Washington in Civil Action No. 3828, *Black Ball Freight Service, et al.* v. *United States,* enjoining the order of September 3, 1968, from going into effect or otherwise becoming operative; and (2) the filing on various dates in September and October 1968, of numerous petitions of protestants for reconsideration of the said order of September 3, 1968; and replies thereto by applicant and the Department of Defense and (3) the Commission's order of November 5, 1968, reopening the proceeding for the purpose of receiving evidence from the respective parties in the form of verified statements; and

It appearing, That as a result of the said order of November 5, 1968, there were filed verified statements and a

number of pleadings directed to the said order of November 5, 1968, and/or to the various verified statements, all of which are now a part of the record before us on reconsideration and have been considered, but will not be specifically described in this order.

It further appearing, That by its verified statement, filed November 20, 1968, the Department of Defense has established:

(1) That, in discharging its responsibility for the conduct of the Nation's defense, it imperatively requires service over the most direct routes in a minimum transit time to effect movement of a vast quantity of numerous commodities between innumerable points and places within the United States and abroad:

(2) That it has experienced inefficient and circuitous joint-line transportation by the use of existing carrier services which have been deficient for its needs, particularly relating to the coordination of the arrival of inbound shipments with the production schedules of manufacturing installations and the departure times and transshipment dates of matters and materials necessary to the national defense;

(3) That it has attempted but has been unable to obtain the required and necessary type of service and knows of no carrier in a position to meet its needs;

(4) That there is nothing in this record to establish that any of the protesting carriers provide a service to meet its needs;

(5) That unless applicant is granted the temporary authority sought herein, the Department of Defense will be without an expedited and flexible service for which it has an immediate and urgent need necessary to the defense of the country; and

(6) That, in balancing the scales of public interest, it is necessary to assure that the Government's immediate and

urgent transportation requirement be met by an expedited and flexible service which will be used to complement rather than replace eixsting services.

Wherefore, and good cause apeparing therefor:

It is ordered, That applicant be, and is hereby, granted temporary authority, conditioned upon full compliance with all applicable, statutory and Commission requirements concerning tariff publications, evidence of security for the protection of the public, and designation of agents upon whom process may be served, to engage in the business of transportation by motor vehicle, in interstate or foreign commerce, to the extent and in the manner set forth in the appendix hereto, subject to the further conditions that unless otherwise provided in the appendix, (1) the service herein authorized shall be limited to the movement of traffic which originates at and is destined to the points and areas specified in the appendix, and (2) no operating right separately described or with any other temporary or permanent authority now held by, or hereafter issued to, applicant or any other carrier.

It is further ordered, That the service provided for in this order shall not be commenced until all requirements have been met and applicant has received notice from the Commission and compliance has been effected and service may be instituted.

It is further ordered, That upon the authority herein granted becoming effective, failure of applicant to render reasonably continuous and adequate service to the public pursuant thereto and to maintain compliance with statutory and Commission requirements shall constitute sufficient grounds for suspension, change, or revocation of the said authority.

It is further ordered. That if applicant fails to comply with all applicable statutory and Commission requirements, rules, and regulations within 30 days from the date hereof,

or such additional time as the Commission may specifically grant, this order shall be of no further force and effect and the said application shall be deemed to be denied for want of prosecution and applicant so notified.

And it is further ordered, That except as herein granted the said application and the pleadings referred to in the second paragraph hereof, be, and they are hereby, denied.

By the Commission, Division 1, acting as an Appellate Division.

H. NEIL GARSON
Secretary

(SEAL)

APPENDIX

No. MC 129908 TA

AMERICAN FARM LINES
OKLAHOMA CITY, OKLAHOMA

By the order of which this appendix is a part, entered under the name and number shown above, applicant upon compliance with the conditions set forth therein and after receipt of notice from the Commission that the said conditions have been met, and provided the operations are begun within the time allowed in said order or any extension thereof, is authorized to engage in the business of transportation by motor vehicle, in interstate or foreign commerce as follows:

Time for which authority is granted—180 days

Type of carrier—Common

Service authorized—

General commodities, including Classes A and B explosives, moving on Government bill of lading, over irregular routes,

Between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah and Arizona.

SAFETY CONDITION: This grant of authority is conditioned upon applicant's maintenance of a satisfactory degree of compliance with the Federal Highway Administration's (Department of Transportation) Motor Carrier Safety Regulations. In the event of non-compliance with these regulations, that Administration may submit a recommendation for revocation of the authority.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

Civil Action No. 3828

BLACK BALL FREIGHT SERVICE, ET AL., *Plaintiffs and Intervening Plaintiffs,*

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants.*

Supplemental Complaint Setting Forth Transactions or Occurrences or Events Which Have Happened Since the Date the Original Complaint Was Filed Herein

Plaintiffs and Intervening Plaintiffs respectfully petition this Honorable Court for a decree setting aside and annulling certain order of the Interstate Commerce Commission, hereinafter referred to as the "Commission", made and entered in the Commission's Orders entitled, "Docket MC-129908TA, American Farm Lines (Oklahoma City, Oklahoma)", on December 19, 1968, served December 20,

1968, and for cause of complaint against the defendants allege:

I

That as to the entities of the plaintiffs and intervening plaintiffs reference is made to the allegations concerning the same contained in the original complaint and the petitions for leave to intervene, which by this reference are made a part hereof.

II

That as to entity of the defendants, and the statutory basis and the venue, plaintiffs and intervening plaintiffs rely upon the allegations of paragraphs II, III, IV, and V of the original complaint herein, which by this reference is made a part hereof.

VI

That the controversy tendered by this complaint arises out of the issuance by the Interstate Commerce Commission of the order identified above, and set forth in Appendix A, hereto attached, and by this reference made a part hereof. Said order was supported by the Verified Statement of Vincent F. Caputo, Director of Transportation and Warehousing Policy of the Department of Defense, a copy of which statement is hereto attached, marked Appendix B and by this reference made a part hereof.

VII

That this Honorable Court entered an "Order Staying Going Into Effect Of Order" in this proceeding on October 2, 1968. This Court order stayed the going into effect of the prior order of the Commission in the same proceeding before it which it had issued on September 3, 1968, and which was attached to the original complaint herein as Exhibit A.

Other happenings related to the subject matter, not pertinent to the issues, but recited for informative purposes, are as follows: Prior to the Court's order of October 2, 1968 some of these plaintiffs had filed petitions for reconsideration under the erroneous assumption that the Commission's applicable rules permitted the filing of petitions for reconsideration. (The rules do not so permit). The Department of Defense under the date of October 16, 1968 filed a reply to these petitions as did applicant, American Farm Lines. The latter also filed a petition to reopen the proceeding. None of these activities were authorized by the Commission's rules, nor was an order by the Commission dated November 5, 1968, reopening the proceeding. Plaintiffs moved and petitioned to strike the unauthorized pleadings of the Department of Defense and of American Farm Lines and petitions to the Commission to vacate its order of November 5, 1968 on the grounds (a) that this Court had taken and retained jurisdiction of the matter, and (b) that such actions were contrary to the mandatory rules of the Commission. The Commission has taken no action on plaintiffs' petitions and motions, but instead issued the order here under attack.

Since the order under attack relies upon the verified statement of the Department of Defense, Appendix B hereof, attached hereto as Appendix C are five typical examples of the more than twenty reply verified statements to that of the Department of Defense, filed by the plaintiffs or intervening plaintiffs. (These were filed under duress as the Commission had taken no action on the various petitions to strike and to vacate the Commission's order of November 5, 1968). Appendix C is hereto attached for informative reasons only.

As indicated, the issues here are whether or not the Commission's order of December 19, 1968 (Appendix A) was unlawful by reason of (a) being in contravention of the jurisdiction of this Court, and (b) of not being in compliance with the Commission's mandatory rules relating to the issuance of temporary authorities.

VIII

That the Interstate Commerce Commission pursuant to authority conferred upon it by the Congress by the provisions of Sections 204(a)(6), 210a(a), 217, and 218 of the Interstate Commerce Act (respectively 49 U.S.C. Sections 304(a)(6), 310(a)(a), 317 and 318) and Sections 4 and 9(b) of the Administrative Procedure Act (respectively 5 U.S.C. 1003 and 1008(b)), instituted a proceeding "for the purpose of determining whether certain proposed rules, or any other rules, should be prescribed to govern the filing, processing and determination of applications by motor common and contract carriers for temporary authority." That to said proceeding the Commission assigned the docket and title of "*Ex Parte No. MC-67, Motor Carrier Temporary Authorities*". That on April 7, 1965, the Commission formally enunciated its decision in said proceeding, as reported in 98 M.C.C. 483 et seq. That in said decision, as here pertinent, it was mandatorily required at page 486 of the report:

> "(c) *Supporting statements.*—Each application for Temporary Authority must be accompanied by a supporting statement(s) designed to establish an immediate and urgent need for service which cannot be met by existing carriers, except that when the Department of Defense is the shipper such support may be furnished directly to the Temporary Authorities Board by the Washington office of that Department. Each such shipper's statement, except those submitted by the Department of Defense, must contain a certification of its accuracy and must be signed by the person (or an authorized representative thereof) having such immediate and urgent need for motor carrier service. Any such supporting statement must contain at least the following information:
>
> (1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved).

(2) Points or areas to, from, or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested.)

(3) Volume of traffic involved, frequency of movement, and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue, and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.

(10) Name and address of motor carrier who will provide service and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's name, address, and motor carrier docket number, if known, and state whether such application was granted or denied and the date of such action, if known."

It was further provided at page 490:

"(b) *Standards for determination.*—The following standards shall be used by the Temporary Authorities Board, and by Division 1 of the Commission acting initially or in an appellate capacity, in the absence of special or unusual circumstances, in the determination under section 210a(a) of the Interstate Commerce Act (49 U.S.C. 310a(a)) of applications for temporary authority.

(1) *General.*—Grants of temporary authority shall only be made upon the establishment of an immediate and urgent need for the transportation of passengers, or of particular commodities or classes of commodities, from specified origin points or areas to specified destination points or areas, having no carrier service capable of meeting such needs. Requests for temporary authority involving service to or from entire states, counties, or other defined areas will warrant approval only when supported by evidence that there is a compelling need for service to or from a representative number of points in each such state, county, or area, that there is a reasonable certainty that such service will be utilized, and that there is no carrier service available capable of meeting such need. Otherwise, such grants will be limited in accordance with the evidence to point-to-point authorization covering the immediate and urgent need for service."

It was further provided at page 491:

"(2) *Immediate and urgent need.*—An immediate and urgent need justifying a grant of temporary authority will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service. Such a showing may in-

volve a new or relocated plant, different method of distribution, new or unusual commodities, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to provide service, or comparable situations which require new motor carrier service before an application for permanent authority can be filed and processed."

It was further provided at page 496:

"(a) *Petitions for reconsideration.*—Pursuant to and in accordance with the Commission's General and Special Rules of Practice, petitions for reconsideration of orders of (1) the Temporary Authorities Board, and (2) Division 1 initially granting or denying temporary authority in proceedings not subject to prior determination by the Temporary Authorities Board, may be filed by any interested person."

IX

That as to the order, which is the subject of this Complaint, the Commission (as in its former order of September 3, 1968) failed to comply, and to require applicant to comply with its formally promulgated rules set forth in paragraph VIII, supra, and in particular with the requirements of (7), (8), and (9). Not a single one of the ten plaintiffs, including the twenty-seven intervening railroad plaintiffs and the five intervening motor carrier plaintiffs, or any other carrier is identified as having failed or refused to provide the service. The identity of not one existing carrier is revealed, nor is any information given as to whether shipments move by motor, rail or water.

X

That each of the plaintiffs and intervening plaintiffs made appearances in the Temporary Authority Proceeding.

XI

That the order herein complained of, and as is set forth in Appendix A, is administratively final, and plaintiffs have exhausted all of their remedies before the Interstate Commerce Commission.

XII

Plaintiffs allege that in making and entering said order, the Interstate Commerce Commission exceeded its statutory and constitutional powers, and committed errors of law, in the following particulars:

(1) In that the Commission issued temporary authority to American Farm Lines without complying with the mandatory standards promulgated in its *Docket Ex Parte 67,* that is, without establishment "of an immediate and urgent need for the transportation of * * * particular commodities or classes of commodities, from specified origin points or areas to specified destination points or areas, having no carrier service capable of meeting such needs."

(2) In that the Commission issued temporary authority to American Farm Lines without complying with the mandatory standards promulgated in its *Docket Ex Parte 67,* that is, without requiring establishment as to "service to or from entire States, counties or other defined areas" * * * "that there is a compelling need for service to or from a representative number of points in each such State, County, or area", and "that there is a reasonable certainty that such service will be utilized, and that there is no carrier service available capable of meeting such need."

(3) In that the Commission issued temporary authority to American Farm Lines without requiring compliance with the mandatory requirements promulgated in its *Docket Ex Parte 67,* that is, by complying

with the requirements specified on pages 4, 5 and 6 hereof.

(4) In that the Commission failed, despite its duty under the National Transportation Policy "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation."

WHEREFORE, plaintiffs respectfully pray as prayed for in the original complaint, and:

3. That after final hearing, this Court adjudge, order and decree that said Order of the Interstate Commerce Commission as is identified in Appendix A in this supplemental complaint, is, and at all times has been, beyond the lawful authority of the Interstate Commerce Commission, and is wholly unlawful and void, and that said order be perpetually set aside, cancelled and annulled;

4. That the plaintiffs have such other and further relief in the premises as the Court may deem just and equitable.

EISENHOWER, CARLSON, NEWLANDS, REHA & SINNITT

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James F. Henriot
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Tacoma, Washington 98402

WILLIAM B. ADAMS
William B. Adams
624 Pacific Building
Portland, Oregon 97204

Order

Now, on this 6th day of January, 1969, upon the motion of AMERICAN FARM LINES for leave to intervene herein as party defendant pursuant to the provisions of 28 U.S.C.A. 2323 it appearing to the court that:

1. AMERICAN FARM LINES was the applicant for temporary authority to operate as a common carrier in Interstate Commerce Commission Docket MC-129908 TA. American Farm Lines, Oklahoma City, Oklahoma.

2. That AMERICAN FARM LINES application was granted by the commission by their order of December 20, 1968 which is sought to be enjoined herein.

3. That pursuant to the provisions of 28 U.S.C.A. 2323 the motion of AMERICAN FARM LINES for leave to intervene should be granted.

It is, therefore, ORDERED, ADJUDGED AND DECREED that AMERICAN FARM LINES be granted leave to intervene herein as party defendant.

DATED this —— day of January, 1969.

.....

Judge
United States District Court,
Western District, Southern
Division

[1] TRANSCRIPT OF PROCEEDINGS held in the above-entitled and numbered cause in the above-entitled court on Monday, January 6, 1969, before the Honorable GEORGE H. BOLDT, United States District Judge, at the United States Courthouse, Tacoma, Washington.

APPEARANCES

On behalf of the Plaintiffs:

Mr. William B. Adams,
Adams, McLaughlin & Simpson,
Attorneys at law,
624 Pacific Building,
Portland, Oregon 97204.

On behalf of the Defendants:

Mr. Charles W. Billinghurst,
Assistant U.S. Attorney,
Federal Building,
Tacoma, Washington.

[2] PROCEEDINGS

The Court: The ultimate questions to be presented and determined in this case are not entirely clear at this time, and even if they were, I would offer not the slightest indication of my views thereon excepting only insofar as necessary for the purpose of considering an application for a restraining order, which, of course, is a very limited matter.

• • • • • • • • • • •

I will briefly summarize the chronology of events as I have it from reading the material you have presented to me in connection with this hearing.

• • • • • • • • • • •

[4] On October 16 the defendants and the Department of Defense and American filed replies to petitions for rehearing, which apparently had been filed with the appellate division sometime prior to October 2, the date of

the hearing in this court. Again the date of those filings is not found in the record. On November 5th, approximately a month later, the appellate division entered an order reopening the same file numbers of the Commission, as to which this court had entered the restraining order, and undertook to receive further evidence concerning matters then within the jurisdiction of this court without applying for modification of the restraining order, notifying this court or otherwise noting the fact that this court had and has jurisdiction of the review sought by plaintiffs. [5] If an application had been made to modify the restraining order for a limited purpose, probably it would have been given sympathetic consideration, provided the rights of all concerned were not adversely affected. On that same date, by the way, American in addition to its other filing filed a petition for the appellate division to reconsider its prior decision. On the 20th of November the Computo verified statement was filed. Presumably other material was also received in that interim, but the Computo statement appears to be the basis on which, without any application or notification to this court, on the 19th of December the appellate division enters an order in the same file under review in this court again granting temporary authority to American. Just the recital of it indicates there is something incongruous about it, and exactly what that may be remains to be determined. But certainly there is something unusual or extraordinary about such a business as that.

Order Staying Going Into Effect of Order

This cause having come on for consideration upon the motion of the plaintiffs for an order staying the going into effect of an order of the Interstate Commerce Commission pursuant to the provisions of Title 5 U.S.C., Sections 702, 703, 704 and 705, and Title 28, Section 2284(3), pending determination of the issues of this proceeding, or until the further order of the Court, said motion being

based upon the verified complaint herein and the affidavits of Earl J. Brooks, Jerome Biniasz, Bill D. Gardner, Mitch Hirsch, Glen Ashworth, Fred S. Anderson attached to the motion, and others, and those of Forrest Arnold, Edward A. Upp, A. John Warren and W. J. Wilson attached to the former motion to stay herein, and the testimony of record received on October 2, 1968 relative to the prior motion and the Court, from said complaint, motion, and the said affidavits and testimony of record, finds that unless this order is entered plaintiffs will suffer irreparable damage to their services as motor common carriers and to themselves, particularly in the areas of lost revenue, investments in equipment and facilities, and the Court being advised in the premises:

IT IS ADJUDGED AND ORDERED that that certain order of the Interstate Commerce Commission issued by it in its Docket MC-129908TA application of American Farm Lines, Oklahoma City, Oklahoma under date of Dec. 19, 1968, be stayed from going into effect and is hereby declared to be inoperative pending a determination by this Court of the issues of this proceeding, or until the further order of the Court.

Dated and done at Tacoma, Washington, in said District this 6th day of January, 1969.

/s/ J. BOLDT
Judge

Answer of the Intervenor, American Farm Lines

Comes now the Intervenor, American Farm Lines, and for answer to the supplemental complaint alleges and states:

First Defense: Intervenor admits the allegations contained in Paragraphs I, II, III, IV, V, VI, VIII and X of the plaint and denies the allegations contained in Paragraphs

X, XI and XII demanding strict proof thereof. Intervenor admits the allegations contained in the first numbered paragraph under Paragraph VII and moves to strike the remainder of Paragraph VII on the grounds that the statements contained therein are admittedly immaterial to the issues herein and do not constitute answerable pleadings.

Second Defense: The intervenor alleges that the order of the Interstate Commerce Commission Division 1, entered on December 19, 1968 and served on December 20, 1968 in its Docket MC-129908 TA, American Farm Lines, Oklahoma City, Oklahoma, attached to the complaint as Exhibit "A" was a lawful exercise of power by the Interstate Commerce Commission as provided in § 210(a) of the Motor Carrier Act, Title 49 U.S.C.A. § 310(a).

Third Defense: The intervenor alleges that the plaintiffs herein have not been injured, irreparably or otherwise, by the action of the Interstate Commerce Commission complained of herein. That the issuance of an injunction against the order of the Interstate Commerce Commission in its Docket MC-129908 TA, American Farm Lines, Oklahoma City, Oklahoma would irreparably injure American Farm Lines and would be contrary to the public interest.

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Attorneys for the Intervenor

Joint Answer of the United States of America and the Interstate Commerce Commission to the Initial Complaint, Filed September 26, 1968, and the Supplemental Complaint, Filed December 31, 1968

The United States of America and the Interstate Commerce Commission, defendants herein, answer the complaints as follows:

Initial Complaint, Filed September 26, 1968

I.

With respect to the allegations contained in the initial complaint, admit that the order of the Commission dated September 3, 1968, may not have been based upon evidence to support its conclusion. Defendants aver, however, that said order was not administratively final since there were properly pending before the Commission, pursuant to Rule 101(g) of the Commission's Rules of Practice (49 C.F.R. 1100.101(g)), numerous petitions for reconsideration filed by plaintiffs and others. Defendants further aver that the issues concerning the Commission's order of September 3, 1968, are moot for the following reasons: (1) this Court issued a temporary restraining order on October 2, 1968, enjoining the effectiveness and operation of said order; (2) the Commission reopened the administrative proceeding on November 5, 1968, in order to receive the evidence which this Court found was required to support a grant of temporary authority; (3) upon receipt of such additional evidence from all parties, the Commission issued its order of December 19, 1968, which again granted American Farm Lines the temporary authority now in question; and (4) by its order of December 19, 1968, the Commission sought to correct the deficiency found by this Court to exist in the prior order of September 3, 1968, without the unnecessary time-consuming expense of having a three-judge court convene to hear argument concerning an order which the Commission may have improvidently issued. Accordingly, the only remain-

ing issue concerns the validity of the Commission's order of December 19, 1968.

Supplemental Complaint, Filed December 31, 1968

II.

Admit the allegations of paragraphs I, II, and VI.

III.

Deny the allegations of paragraph VII, except to admit (1) the issuance by this Court of a temporary restraining order on October 2, 1968; (2) the filing prior thereto of petitions for reconsideration, and the subsequent filing of replies thereto, and a petition to reopen, and petitions to strike, and replies thereto; (3) the filing of a verified statement by the Department of Defense and replies thereto; and (4) the filing by plaintiff of certain petitions and motions with the Commission.

IV.

Admit the allegations of paragraph VIII.

V.

Deny the allegations of paragraph IX.

VI.

Admit the allegations of paragraphs X and XI.

VII.

Deny the allegations of paragraph XII.

VIII.

In further answer to the allegations of the complaint, deny that the order of the Commission dated December 19, 1968, is erroneous for the reasons specified or any other reason.

WHEREFORE, the United States of America and the Interstate Commerce Commission pray that the temporary restraining order be vacated, that the relief sought in the complaint be denied, and the complaint be dismissed.

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Washington, D. C. 20423

Attorneys for the Interstate Commerce Commission

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

Civil Action No. 3828

Opinion, Findings of Fact, Conclusions of Law

BLACK BALL FREIGHT SERVICE; CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE; D-C INTERNATIONAL, INC.; GARRETT FREIGHTLINES, INC.; NAVAJO FREIGHTLINES, INC.; PACIFIC INTERMOUNTAIN EXPRESS CO.; WESTERN GILLETTE, INC.; RISS & COMPANY, INC.; IML FREIGHT, INC.; AND AMERICAN TRUCKING ASSOCIATIONS, INC., *Plaintiffs,*

YELLOW FREIGHT SERVICE; T.I.M.E. FREIGHT, INC.; TRANSCON LINES, INC.; CONSOLIDATED COPPERSTATE LINES; TRI-STATE MOTOR TRANSIT CO.; UNITED TRANSPORTS, INC.; BRASWELL MOTOR LINES, INC.; CENTRAL FREIGHT LINES, INC.; CENTRAL EXPRESS, INC.; RED ARROW FREIGHT LINES; BROWN EXPRESS, INC.; ALAMO EXPRESS, INC.; J. H. ROSE TRUCK LINE, INC.; J. J. WILLIS TRUCKING CO.; J. V. HARRISON TRUCK LINES, INC.; MILLER TRUCK LINE, INC.; H. S. ANDERSON TRUCKING CO.; CENTRAL FORWARDING, INC.; ROBERTSON TANK LINES, INC.; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY; CHICAGO AND NORTH WESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; THE COLORADO AND SOUTHERN RAILWAY COMPANY; THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY; ELGIN, JOLIET AND EASTERN RAILWAY COMPANY; FORT DODGE, DES MOINES AND SOUTHERN RAILWAY COMPANY; FORT WORTH AND DENVER RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; GREEN BAY AND WESTERN RAILROAD COMPANY; GULF MOBILE AND OHIO RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COM-

PANY; ILLINOIS TERMINAL RAILROAD COMPANY; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; MISSOURI-KANSAS-TEXAS RAILROAD; MISSOURI PACIFIC RAILROAD COMPANY; NORFOLK AND WESTERN RAILWAY COMPANY; NORTHERN PACIFIC RAILWAY; ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; THE TEXAS AND PACIFIC RAILWAY COMPANY; TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY; AND UNION PACIFIC RAILROAD AND WATERLOO RAILROAD, *Intervening Plaintiffs*,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Defendants*,

AMERICAN FARM LINES, *Intervening Defendant*.

Before: JERTBERG, Circuit Judge, and BOLDT and GOODWIN, District Judges

BOLDT, District Judge:

American Farm Lines (AFL) made an application under the provisions of Section 210a(a) Interstate Commerce Act, 49 U.S.C.A. Section 310a(a)[1] and Ex Parte No. MC-67, *Motor Carrier Temporary Authorities*, 98 M.C.C. 483, 49 C.F.R. 1131, et seq., to the Interstate Commerce Commission (ICC) for a Temporary Authority to provide single-line motor carrier service. The application appeared

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[1] Interstate Commerce Act, Section 210a(a), as amended, 49 U.S.C. 310a(a), provides:

"To enable the provision of service for which there is an *immediate and urgent need* to a point or points within a territory having *no carrier service capable of meeting such need*, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify, but for not more than an aggregate of one hundred eighty days, and shall create no presumption that corresponding permanent authority will be granted thereafter." (Emphasis added.)

in the Federal Register June 8, 1968. The thirty-five motor carrier plaintiffs in this action, twenty-eight intervening rail carrier plaintiffs and many other carriers, protested the application. The Temoprary Authorities Board of the Commission (TAB) by order dated July 12, 1968, denied the application. AFL filed a petition for reconsideration, appealing the decision of TAB. Division 1 of ICC, acting as an Appellate Division, by order dated September 3, 1968, vacated the order of denial issued by TAB and granted the application.

Some of the plaintiffs and other carriers filed petitions for reconsideration, which were not authorized by the applicable rule, Ex Parte No. MC-67, *Motor Carrier Temporary Authorities,* 98 M.C.C. 483 at page 496, (49 C.F.R. 1131.6), since neither of the conditions authorizing such petitions was present:

> "(a) Petitions for reconsideration.—Pursuant to and in accordance with the Commission's General and Special Rules of Practice, petitions for reconsideration of orders of (1) the Temporary Authorities Board, and (2) Division 1 initially granting or denying temporary authority in proceedings not subject to prior determination by the Temporary Authorities Board, may be filed by any interested person."

Plaintiffs' complaint was filed in this court on September 26, 1968, together with a motion for an order to stay the going effect of the ICC order of September 3, 1968.

This motion was argued October 2, 1968 before Judge Boldt per Title 28, Section 2284(3) and (5). After considering oral and written evidence and the argument of counsel, the Court entered an order staying the going into effect of the ICC order of September 3, 1968, and declaring it to be otherwise inoperative pending determination in this Court of the issues presented in this proceeding, or until further order of this Court. At that hearings, coun-

sel for ICC did not challenge the administrative finality of the ICC order of September 3, 1968. By its order of October 9, 1968, ICC recognized the stay order of this Court.[2]

On October 16, 1968, the Department of Defense filed with ICC a reply to the petitions for reconsideration, and on October 17, 1968, AFL filed a combined reply to the petitions for reconsideration and a petition to reopen. Many plaintiffs filed motions to strike these pleadings on the ground they were not authorized by ICC Rule 49 C.F.R. 1131.6, nor by any other rule.

On November 12, 1968, ICC filed in this court a "Motion to Stay Further Proceedings Herein," stating therein that on November 5, 1968, on its own motion, ICC had reopened the proceeding before it and requested a stay of further action in the case before this court. By their prompt opposition to this motion, plaintiffs contended that ICC was not authorized to reopen its proceeding because this court had taken jurisdiction of the matter. Also, plaintiffs asserted that even if the court had not taken jurisdiction, the ICC Rules precluded reopening of the proceeding.

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[2] "Upon consideration of the record in the above entitled proceedings, and the entry of a temporary restraining order on October 3, 1968, by the United States District Court for the Western District of Washington in Civil Action No. 3828, *Black Ball Freight Service, et al* v. *United States*, wherein the Court stated in part:

> 'IT IS ADJUDGED AND ORDERED that that certain order of the Interstate Commerce Commission issued by it in its Docket MC-129908TA application of American Farm Lines, Oklahoma City, Oklahoma under date of September 3, 1968, be stayed from going into effect or otherwise be inoperative pending a determination by this Court of the issues of this proceeding, or until the further order of this Court.'

and good cause appearing therefor:

It is ordered, that the effective date and operation of the order heretofore entered September 3, 1968, in No. MC-129908TA be, and it is hereby, postponed until further order of the Commission.

It is further ordered, that in view of the Court's order and of the order of the Commission, American Farm Lines may not now perform any for-hire operations in interstate or foreign commerce pursuant to the Commission's order of September 3, 1968, entered in this proceeding.

No action has ever been take not note the ICC motion for hearing or to otherwise procure the stay sought by the motion.

The same contentions were presented to ICC in plaintiff's motion for vacation of the reopening order.

Since the ICC order of November 5, 1968 recited that a verified statement from the Department of Defense would be received, and no ruling having been made on their petitions to vacate the order of November 5, plaintiffs responded to the Caputo verified statement submitted by teh Department of Defense. These responses asserted plaintiffs had satisfactorily performed all services previously requested of them and their willingness and ability to perform any service requested of them by any shipper, including the Department of Defense.

On December 19, 1968, ICC issued a new order in the same docket granting AFL the same temporary authority previously granted by the ICC order of September 3, 1968 as to which the stay order of this court was and still is in full effect.

On December 31, 1968, pursuant to Fed. Civ. R. 15(d), plaintiffs filed in this court a "Supplemental Complaint Setting Forth Transactions or Occurrences or Events Which Have Happened Since the Date the Original Complaint was Filed Herein" and a motion to stay the going into effect of the ICC order of December 19, 1968.

Following extended argument, on January 6, 1969, Judge Boldt entered an order restraining the going into effect of the ICC order of December 19, 1968 and ordering it to be inoperative until further order of this court. Full hearing on the merits was heard by the Three-Judge Court on January 24, 1969.

The issuance of the ICC order of September 3, 1968, was based on a supporting letter written by the Department of Defense, dated May 15, 1968. The ICC also had

before it a letter dated April 30, 1968 written to the president of AFL wherein the Department of Defense stated it was not in a position to verify that there would be insufficient or inadequate service to meet Department requirements in the absence of the single-line service AFL seeks to provide.

"As authorized by the ICC Act, after extended consideration the ICC adopted Temporary Authority Rules, effective July 5, 1965, specifying procedures for the submission and determination of temporary authority applications under Section 210(a) ICC Act. Ex Parte No. MC-67, 49 C.F.R. 1131. . . . The rules specifically provide in mandatory terms that each filed temporary authority application must be accompanied by one or more supporting statements and each such statement must contain at least the information specified in eleven categories," *Acme Cartage Co., et al* v. *United States, et al,* 290 F. Supp. 453 at page 454. Among those categories are:

"(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the date and results of such efforts.

"(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal."

The ICC Rules, 49 C.F.R. 1131 et seq., provide for the filing and processing of written temporary authority applications and establish standards and mandatory procedures applicable to all phases of the submission and determination of such applications. Except for supporting statements by the Department of Defense, the rules require "certified" evidentiary statements by the supporting shippers claiming to need the new service, and further require factual statements in a minimum of eleven specific categories. The rules require notice of the proceeding to be

given by publication in the Federal Register and authorize protest of the application by "persons who can and will provide all or any part of the proposed service". Each protest must specify the service the protestant can and will offer and must be served upon the applicant. Submission of supplemental data after the applications are filed is not permitted. The ICC rules establish specific evidentiary standards for determination of each application for temoprary authority and provide that grants "shall be only made" where the evidence "establishes" an immediate and urgent need in accordance with the prescribed standards.

Rule 49 C.F.R. 1131.4(b)(4) pertaining to single-line service provides:

> "Generally, the desire of a shipper for single-line service in lieu of existing interchange or connection-carrier service will not warrant a grant of temporary authority. A grant of temporary authority to effectuate single-line service will be authorized only when it is clearly established that the carriers providing multiple-line service are not capable of, or have failed in, meeting the reasonable immediate and urgent needs of shippers or receivers between the points or territories and in respect of the commodity or commodities involved."

Plaintiffs assert the initial supporting letter accompanying AFL's temporary application did not provide the information required by 49 C.F.R. 1131.2(c), particularly (8) and (9) thereof, and that granting of the temporary authority in question without a showing of the required information in effect denied them consideration of their protests. Plaintiffs contend no specific failure of service by plaintiffs has been asserted to which specific response could be made and that their response to generalities could only be met by their general assertions.

In their answer, defendants admit:

"With respect to the allegations contained in the initial complaint, admit that the order of the Commission dated September 3, 1968 may not have been based upon evidnece to support its conclusion."

In their brief, the defendants admit:

"* * * That the Commission's order of September 3, 1968 (1) may not have been based upon evidence to support its conclusions."

These concessions indicate the ICC itself had strong misgivings concerning its compliance with the rules ICC itself had promulgated.

Defendants contend the ICC order dated September 3, 1968 became moot when ICC reopened the proceeding on November 5, 1968. This contention is without merit. Prior to reopening of the proceeding which resulted in the ICC order of September 3, 1968, judicial review of that order had been perfected pursuant to 28 U.S.C. 1336. Jurisdictio thereof vested in and had been exercised by this court in an extended evidentiary hearing wherein ICC actively participated. Following such hearing the stay order of this court was entered. In these circumstances, without prior leave of court, ICC was without authority to take any action which directly or indirectly might nullify or impair the jurisdiction of this court over the ICC order under review.

Defendants further contend that the ICC order of September 3, 1968 was not administratively final. However, at the oral argument on the merits defendants conceded that plaintiffs were properly in court seeking review of that order.

Plaintiffs assert that the September ICC order was administratively final under the Temporary Authority Rules, 49 C.F.R. 1131.6, and that if those rules do not govern, the general ICC rule, 49 C.F.R. 1100.101(a)(2), is applicable:

"All decisions, orders or requirements of a division of the Commission in any proceeding shall be considered administratively final, except those involving issues of general transportation importance, those wherein the division reverses, charges or modifies a prior decision by a *hearing officer*, and those wherein the initial decision is made by a division." (Emphasis added.)

Indisputably this proceeding did not involve action by a hearing officer, but rather a reversal by ICC Division 1 of a prior determination by its Temporary Authority Board.[3]

Title 28 U.S.C. Section 1336 provides:

"*Interstate Commerce Commission's orders.* (a) Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission."

The Supreme Court stated in *Pennsylvania Railroad Company* v. *United States,* 363 U.S. 202 (1960):

"We decided some years ago while a mere 'abstract declaration' on some issue by the Commission may not be judicially reviewable, an order that determines a 'right or obligation' so that 'legal consequences' will flow from it is reviewable. Rochester Tel. Corp. v. United States, 307 U.S. 125, 131, 132, 143, 83 L ed 1147, 1152, 1153, 1159, 59 S.Ct. 754."

And further:

"We have held that judicial review is equally available whether a Commission order relates to past or

[3] The disposition of an application by a Board does not constitute a hearing before a hearing officer. Compare Trans-American Freight Lines, Inc. v. U.S., 258 F. Supp. 910 (1966).

future rates, or whether its proceeding follows referral by a court or originates with the Commission. El Dorado Oil Works v. United Stattes, 328 U.S. 12, 90 L ed 1053, 66 S.Ct. 843."

In Inland Steel v. U.S., 306 U.S. 153 (1939), the Court stated:

"*Third.* The appellant takes the position that the Commission's purported postponement of its command to cease and desist (eighteen months after the interlocutory injunction was granted) deprived the court of authority to enforce the conditions of its interlocutory injunction. However, since the court had exercised jurisdiction to review and suspend the Commission's report and order, the administrative body was without power to act inconsistently with the Court's jurisdiction, had it attempted to do so. . . ."

Defendants do not dispute the fact that the ICC order of September 3, 1968 was a final grant of temporary authority to AFL to engage in operations thereunder, subject only to compliance with tariff requirements, and that the order was at that time reviewable by a three-judge court. Defendants have cited several cases[4] in support of their argument that the ICC retains "continuing jurisdiction over its orders at all times." However, none of the cases deals with the question now presented, i.e. whether, after a court has review jurisdiction of an ICC order and a stay of that order has been entered by the court, the ICC may nullify the review and the stay order by reopening

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[4] Aberdeen & Rockfish RR v. United States, 270 F. Supp. 695 (E.D. La. 1967), Affirmed as Modified 393 U.S. 87 (1968); Alamo Express, Inc. v. United States, 239 F. Supp. 694 (W.D. Tex. 1965), Affirmed 382 U.S. 19 (1965); Donaldson v. Read Magazine, 333 U.S. 178 (1948); United States v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 294 U.S. 499 (1935); Anchor Line Limited v. Federal Maritime Commission, 299 F. 2d 124 (Ct. of Appeals, D.C. 1962); Atchison, Topeko and Santa Fe Railroad Company v. United States, 231 F. Supp. 422 (N.D. Ill. E.D. 1964).

the ICC proceedings. The ICC itself has answered this question in Central Freight Lines, Inc. v. Strickland Transportation Lines, Inc., 102 M.C.C. 291.

> ". . . Moreover, when the Court has exercised jurisdiction to review and suspend a report and order of the Commission, we are without power to act inconsistently . . ."

Even if ICC had jurisdiction to reopen the ICC proceeding and to consider the Caputo verified statement, it would not meet the requirements of categories (8) and (9) of ICC Rule 49 C.F.R. 1131.2(c).

The Caputo verified statement fails to show any efforts by the Department of Defense to obtain from existing carriers the service AFL seeks to provide, or the identity of any existing carriers who failed or refused to provide the needed service and the reasons given for any such failure or refusal. Statement of these matters is mandatorily required by categories (8) and (9).

At best, the Caputo verified statement merely states the Department of Defense preference for the continuance of AFL's service and the expansion of that service into single-line service. AFL has been performing service for the Department of Defense under the provisions of 49 U.S.C. 303(b)(5), but no issue pertaining to that service is now before this court. The fact that the Department of Defense may desire a new or expanded type of service by a particular carrier does not justify the granting of temporary authority to provide such service without full compliance with all mandatory ICC rules.

While under 49 U.S.C. 310a(a) the ICC is vested with wide discretion to grant temporary authority for motor carrier services, it may only do so when both conditions specified in the statute are shown to exist, i.e. (1) "an immediate and urgent need" for service, (2) "within a territory having no carrier service capable of meeting such

need." It is clear from the language of the statute that in the absence of either one or both of the conditions specified, ICC "has neither power nor discretion to grant temporary authority applications . . . Variable and unpredictable enforcement of important and mandatorily stated rule provisions is inequitable in principle and unsound in practice." *Acme Cartage Co.* v. *U. S., supra,* at 456-457.

The court's Findings of Fact and Conclusions of Law are hereby found and held as stated in the foregoing Opinion.

For the reasons stated, we find that the granting of each Temporary Authority referred to in the foregoing Opinion was arbitrary, capricious and erroneous in law. Accordingly, each of the Temporary Authorities should be and hereby is held null and void. The stay order as to each Temporary Authority is continued in effect until further order of this court.

DATED this 26th day of March, 1969.

GILBERT H. JERTBERG
Gilbert H. Jertberg
United States Court of Appeals Judge

GEORGE H. BOLDT
George H. Boldt
United States District Court Judge

WILLIAM N. GOODWIN
William N. Goodwin
United States District Court Judge

Civil Action No. 3828

Judgment

This cause came on for trial on the merits before the undersigned judges as a three-judge court on January 24, 1969 and after the argument of counsel was submitted for decision. The court now having made and entered herein its Opinion, Findings of Fact and Conclusions of Law in writing, and being fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that each of the Temporary Authorities issued by the Interstate Commerce Commission to intervening defendant American Farm Lines on September 3, 1968 and December 19, 1968, respectively, be and the same hereby is held and adjudged null and void.

The stay order as to each of said Temporary Authorities is continued in effect until further order of this court.

DATED this 26th day of March, 1969.

GILBERT H. JERTBERG
Gilbert H. Jertberg
United States Court of Appeals Judge

GEORGE H. BOLDT
George H. Boldt
United States District Court Judge

WILLIAM N. GOODWIN
William N. Goodwin
United States District Judge

Affidavit of Vincent F. Caputo

My name is Vincent F. Caputo. I am employed by the Department of Defense (hereinafter "DOD") as the Director for Transportation and Warehousing Policy. I am the official responsible for, among other things, the efficient and economical operation of physical distribution activities for DOD. This affidavit is submitted in support of the application of American Farm Lines (hereinafter "AFL") for a stay of this Court's judgment of March 26, 1969 pending appeal from that judgment.

For reasons more fully set out below I believe that the Department of Defense and the American public generally will suffer irreparable loss pending the appeal in this case unless this Court stays its judgment of March 26, 1969 and permits the temporary operating authority awarded AFL by the Interstate Commerce Commission to take effect.

In discharging its responsibility for the conduct of the Nation's defense, DOD is required to move vast quantities of commodities between innumerable points and places within the United States and abroad. A substantial percentage of this traffic involves points in the States of Kentucky, Indiana, Illinois, Missouri, Louisiana, Arkansas, Texas, Kansas and Oklahoma, on the one hand, and points in Washington, California, Nevada and Utah, on the other —that is, the territories covered by the temporary authority awarded to AFL. Between August 1967 and June 1968, the last period for which statistics are currently available, DOD caused 978,516 net tons of freight to be transported between these territories. I have no reason to believe that the current DOD transportation requirements would be materially different. This traffic included numerous items in the definition of Class A and Class B explosives, including ammunition, bombs, and a variety of other ordnance items. A substantial part of this traffic is shipped under conditions requiring expedited delivery and thus must move over the most direct and quickest route.

DOD supported AFL's application for temporary authority because the service proposed by AFL was not available on a single-line, irregular route basis from motor carriers serving the territories covered by AFL's application.

Because of the limited nature of the authorities of existing carriers, DOD shipments in these territories ordinarily had to be carried on a joint-line, regular-route basis. Because of the necessity of piecing together separate authorities, traffic frequently was unable to move in a direct line between the origination points and the destination points. As a result, DOD was compelled to calculate transit time on the basis of 300 miles for every 24 hours. In contrast, when AFL began hauling for DOD on a direct lingle-line basis, transit times were cut by 67 percent. DOD calculates that it takes AFL only 8 hours to move the same traffic 300 miles.

The consequences of AFL's significantly shorter transit time have been enormous, both in terms of insuring the fastest possible delivery of critical war materials and in terms of effecting significant cost savings to the Government. Between December 1966 and the end of March 1969, the use of AFL has saved DOD in direct transportation costs alone $1,062,300. While figures are not available, I believe that this saving, itself substantial, is vastly overshadowed by the indirect systems savings—that is, such savings as warehousing and inventory costs—that direct single-line service makes possible.

Finally, there is the factor of safety. It is DOD's firm conviction that maximum use of direct single-line transportation of explosives and other hazardous materials is absolutely mandatory if the dangers to the public from the transportation of such items are to be kept to a minimum. The longer hazardous commodities are on the highway, the greater the exposure of risk to the public. We in DOD are doing everything possible to minimize hazards in the

transportation of explosives and other hazardous commodities, and I believe we are doing an excellent job in this respect. However, by the use of AFL's direct, single-line service, we could reduce the risk to the public even further through reduced mileages.

DOD is not alone in recognizing the extreme public importance of obtaining direct, single-line transportation of hazardous commodities. On August 12, 1968, the State of California petitioned the Interstate Commerce Commission to institute a proceeding for the purpose of adopting regulations to require common carriers of hazardous materials to transport such materials by the "nearest, direct route." The petition of the State of California, attached hereto as Appendix A, aptly describes the hazards of permitting such traffic to move in any other way. In recognition of the extreme desirability of obtaining such direct, single-line movement of hazardous traffic, the Department of Transportation has filed a statement in support of California's petition, and has also supported an application of Riss and Company, a leading carrier of explosives, in Docket No. MC-200 (Sub. 222), for permission to avoid circuitous routes. Copies of the Department of Transportation's statements are attached as Appendix B.

If this Court's judgment of March 26, 1969 is not stayed and AFL's temporary authority permitted to take effect, the Government and the public will suffer irreparable loss by the significant curtailment of AFL's service to DOD that will result. AFL's service to DOD has heretofore been provided to DOD by virtue of the exemption for farm cooperatives provided in section 203(b)(5) of the Interstate Commerce Act. However, as a result of the Interstate Commerce Commission's promulgation on May 21, 1969 of regulations implementing the 1968 legislation that limits the cooperative exemption, AFL's ability to haul for DOD will be substantially reduced. The new ICC regulations, which go into effect July 7, 1969, will prohibit AFL from carrying more than 15 percent of its total annual

interstate tonnage for non-members, including DOD. Accordingly, DOD believes that it is facing imminent deprivation of a significant volume of direct, single-line service which is now and has been available to it since December 1966. In the interest of conserving the taxpayers' dollars, which once spent cannot be recovered, in speeding up the line of supply, and in reducing safety hazards associated with the carriage of hazardous commodities, DOD believes it essential at least to maintain the status quo pending resolution by the Supreme Court of the issues raised by this Court's judgment of March 26, 1969. To require a temporary cessation of AFL's service during this interim period would reduce DOD's ability to achieve expedited delivery of critical materials, would substantially increase the cost to DOD and the taxpayers of moving defense traffic, and would deny the public the additional safety benefit of reduced on the road mileage of hazardous commodities.

Accordingly, DOD respectfully requests that the Court consider the foregoing information in passing upon AFL's motion for a stay pending appeal.

VINCENT F. CAPUTO
Vincent F. Caputo

Sworn to and subscribed before me this 5th day of June, 1969.

DAVID D. SUBGRAVE
Notary Public

My Commission Expires May 13, 1972

Affidavit

STATE OF WASHINGTON }
County of King } ss.

I, Forrest Arnold, being first duly sworn, depose on my oath and say:

I am Traffic Manager of Black Ball Freight Service, one of the Plaintiffs herein, and have personal knowledge of the following matters:

That I make this affidavit in opposition to a motion of American Farm Lines for an order to (1) stay judgment and (2) permit the temporary authority granted them to take effect, pending final disposition of the appeal from said judgment.

That for more than the past twenty-five years Black Ball Freight Service has participated in the transportation of general commodities including Class A and B explosives moving on Government bills of lading between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and on the other, points in Clallam, Jefferson, Kitsap and Mason Counties, Washington.

That my company has derived approximately 24 percent of its total revenue from interlining said traffic at Seattle or Tacoma, Washington. That during 1967 my company interlined in excess of 52,000,000 pounds of traffic moving between the above described points on Government bills of lading and in excess of 70,000,000 pounds in 1963. That our share of such traffic thus far in 1969 has been substantially diminished due primarily, we believe, to diversion to American Farm Lines. The flow of Government traffic has increased, but our share has substantially decreased.

That such traffic is necessary for the maintenance of my company's operations in that during 1967 our operating

ratio (percentage of total expenses to total revenue) was 94.8 percent. That our operating ratio in 1968 was about 93 percent but this far in 1969 exceeds 100 percent (a loss position).

That our participation in the subject traffic consists of being the delivering or originating carrier on traffic moving between points in Clallam, Jefferson, Kitsap and Mason Counties, Washington, and the States enumerated above, through interchange with other carriers at Seattle or Tacoma, Washington. The trailer equipment of the connecting carrier invariably moves through without physical transfer of the lading between the above-named Washington counties and the above-named States. Our participation in this service is, and has been, authorized by the certificate issued to us by the Interstate Commerce Commission in its Docket MC-7325 and Subs 3, 5, 6, 8 and 9 thereof.

That the stay of judgment which is sought herein would enable American Farm Lines to divert very substantial and increasing traffic from our company. I would estimate the diversion to reach not less than fifty percent of our participation in the subject traffic or not less than 12 percent of our total traffic. This is also because American Farm Lines under the authority would doubtless be a preferred carrier and in any event as an additional carrier would participate in the traffic. I say that it would doubtless be a preferred carrier, because its affidavits herein so state. I predicate my estimate in part upon the Exhibit H-2, placed in evidence by the Interstate Commerce Commission's Bureau of Enforcement in the Interstate Commerce Commission's MC-C 5835 American Farm Lines—Investigation of Operations and Practices, on June 3, 1969. I attach it hereto as my Appendix A. This exhibit reflects the vast increase in transportation by American Farm Lines of Government Traffic. During the six months of October 1, 1968 through March 31, 1969, the Government traffic transported by it increased from 9,000,000 pounds per month to 13,500,000 pounds per month. Also the

revenue figures show that American Farm Lines now receives approximately two-thirds of its revenue from the Government, and but one-third from the exempt cooperative status for which purpose it was created.

The loss of this very important traffic, in my opinion, will place our operations in a loss position and will cause irreparable injury to our company and to its service to the general shipping public contrary to the National Transportation Policy.

It is believed Black Ball Freight Service is the only general commodity carrier serving the entire Olympic Peninsula area (Clallam, Jefferson, Kitsap and Mason Counties) of the State of Washington—which area lies between Seattle and the Pacific Ocean, although we have numerous competitors serving parts of this area. Loss of this important traffic to American Farm Lines will impair our ability to serve this area on local as well as interline traffic.

It is contended that the existing carriers fail to effect delivery on time. In other words, unsatisfactory transit times are claimed. The facts are to the contrary. We have checked our records for a 12 months period and were unable to find a single instance where we failed to make delivery on time at Bangor, Washington (or any other point which we are authorized to serve) on the subject traffic. To the contrary, we find that very frequently the equipment arrives at Bangor but cannot be unloaded because the vessel on which the shipment is to be loaded is still at sea, or for other reasons of the receiving installation which reasons are beyond the control of the carrier. This is exemplified by "Appendix B" attached hereto and by this reference made a part hereof. This is a true copy of but a single sheet of a record regularly kept by us on a daily basis. The record covers all loads handled by our company and reflects the time when equipment was available for unloading at Bangor and the day on which it was actually unloaded.

This particular sheet covers 26 shipments for the four-day period shown. It reflects the following periods of detention (when the equipment was available for unloading but not unloaded by the Government):

Number of Days	*Number of Loads*
1	2
4	2
5	2
6	1
7	3
8	4
9	6
10	2
11	1
14	3

This adds up to 206 lost days on 26 loads or an average of 8 days per load. We estimate that for each lost day we incur approximately $10.00 per vehicle loss. Although the carriers' equipment was out of service, the Government (the Department of Defense) paid nothing for the lost time.

That our safety record through these many years has been a good one. Though we have handled hundreds of loads of ammunition each year for many years, a check of our records for the past five years discloses no reportable accidents involving Class A or B explosives. Additionally, when our Sub 9 was granted in February 1963 it carried, in keeping with current I.C.C. practice, an expiration date of February 1, 1968 as to Class A and B explosives. The expiration date has since been extended, without hearing, to February 1, 1973.

That we have reasonably met the transportation requirements of the Department of Defense with practically no complaints and to our knowledge no more than normally expected where the human element is concerned.

That while our tonnage of ammunition has steadily diminshed in this year of 1969, observation of our personnel indicates that American Farm Lines continues to move a very substantial volume into Bangor, even though they do not have the authority to do so.

That to properly handle explosives our line has, through recent years, expended a very considerable amount of time and money in acquiring and training personnel and in securing and maintaining equipment which would enable us to properly and adequately transport such traffic. That at the end of 1968 we had in excess of 15 drivers used in handling this traffic, some of which we have now lost due to loss of a very substantial part of the ammunition traffic. Beyond this, we estimate that we have invested approximately $200,000.00 in equipment in order to handle such traffic and we have been severely handicapped in the use of this investment through loss of the traffic, principally, we feel, to American Farm Lines.

Thus, it will be seen that in addition to the loss position in which our operations will be placed, our line will suffer irreparable loss in personnel and investment.

The foregoing is true to the best of my knowledge and belief.

FORREST ARNOLD
Forrest Arnold

STATE OF WASHINGTON }
County of King } ss.

The foregoing affidavit was subscribed and sworn to before me this 8th day of July, 1969.

MAKING
Notary Public for Washington

My Commission expires: 6/6/69

APPENDIX B

☐ BLACK BALL FREIGHT SERVICE ☐ BLACK BALL TRANSPORTATION, INC.

HIGHWAY MANIFEST

CARGO MANIFEST Range Pipe Line

	Shipment	Origin			Arrive at Destination	Date	Time Received	Time Delivered
1	2778 Rein 3436	Crane				11/1	1530	11/3	0800
2	2779 CFW29 1884	Fall Creek				11/2	0730	11/10	0900
3	2780 Pet 50-1219	Corpus Christi				11/2	0730	11/11	0910
4	2781 HB 70-179	Pelcrow				11/2	1330	11/7	1400
5	2782 CFW29 1876	Fall Creek				11/2	1230	11/12	1330
6	2783 CFW29 1640	"				11/2	1330	11/16	0915
7	2784 HB 70-307	Pelcrow				11/2	1700	11/13	1200
8	2785 Pet 50-1275	Corpus Christi				11/2	1635	11/10	2300
9	2786 TP 20-816	Ft Jackson Creek #2				11/2	1730	11/9	1100
10	2787 Pet 50-1104	Corpus Christi				11/2	pm	11/11	1015
11	2788 Rein 3223	Crane				11/2	2145	11/2	1440
12	2789 Pet 50-1326	Corpus Christi				11/2	2200	11/10	2315
13	2790 TP 20-30412	Ft Jackson Creek				11/2	2215	11/9	1630
14	2791 HMC 2647	Pelcrow				11/2	2200	11/7	0330
15	2792 Rein 3269	Crane				11/3	0400	11/12	1000
16	2793 Rein 3725	"				11/3	0400	11/12	1040
17	2794 Rein 3388	Ft Jackson Creek				11/3	0830	11/9	1300
18	2795 Rein 3341	Crane				11/3	1130	11/12	1445
19	2796 Rein 3465	"				11/3	1330	11/12	1220
20	2797 CFW 968-78	Mc Allister				11/3	1530	11/14	1520
21	2798 Pet 50-1435	Corpus Christi				11/3	1530	11/10	2120
22	2799 Pet 2739	Pelcrow				11/3	1730	11/7	2330
23	3000 Pet 46-45	"				11/3	1730	11/7	2330
24	3001 HMC 2735	"				11/3	2000	11/4	2300
25	3002 Rein 3632	Ft Jackson Creek				11/10	0330	11/12	1100
26	3003 Rein 3720	"				11/11	0330	11/14	1020
	TOTAL								

APPENDIX B

FORM 10 B/M

52,000,000 pounds of traffic moving between the above described points on Government bills of lading and in excess of [illegible] in 1968. That our share of such traffic thus far in 1969 has been

	Member	Non-Member	Government	Total
1966				
Tonnage	42,726,709	46,613,929		89,340,638
Revenue	$ 724,748.09	716,574.64		1,441,322.73
1967				
Tonnage	162,235,519	60,304,564	40,085,634	262,625,717
Revenue	$ 1,412,365.20	885,131.65	1,284,594.94	3,582,091.79
1968				
Tonnage	243,100,514	61,680,312	108,076,129	412,856,955
Revenue	$ 2,089,953.77	807,577.56	4,449,478.39	7,347,009.66
1st Six Months of 1969 Fiscal Year				
Tonnage	215,739,092	2,897,940	82,324,361	300,961,393
Revenue	$ 2,134,964.06	40,894.12	4,040,633.80	6,216,491.98

Computation obtained from IBM Run sheets.
Tonnage figures reflect pounds.
Computation based on American Farm Lines Fiscal Year commencing October 1.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

Civil Action No. 3828

BLACK BALL FREIGHT SERVICE, ET AL., *Plaintiffs and Intervening Plaintiffs*

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, *Defendants,*

AMERICAN FARM LINES, *Intervening Defendant*

State of Oregon }
County of Multnomah } ss

Affidavit

I, Edward V. Taylor, being first duly sworn, depose on my oath and say:

My name is Edward V. Taylor, and my business address is 1633 Northwest 21st Ave. (P. O. Box 3062), Portland, Oregon 97208. I am Director of the Western Traffic Service office of Consolidated Freightways Corporation of Delaware, hereinafter called CF, a plaintiff in this proceeding. I have been employed by CF for 11 years, 5 years as Traffic Manager and for the past 6 years in my present position. Among my duties is the responsibility for the preparation and presentation of evidence before the Interstate Commerce Commission and various state regulatory bodies. I am familiar with the issues involved in this proceeding, and have previously submitted an affidavit in it.

CF is a common carrier of general commodities under Certificate MC 42487 and subs thereto issued by the Interstate Commerce Commission. CF conducts very substantial operations between points in the States of Kentucky, Indiana, Illinois, Missouri, Arkansas, Texas, Kansas, and Oklahoma, on the one hand, and points in Washington, Cali-

AMERICAN FARM LINES
APPEND.

fornia, Nevada and Utah—the territorial scope of the American Farm Lines temporary authority application The only State involved in the American Farm Lines application not served by CF is Louisiana, and CF maintains interline arrangements over numerous gateways with other common carriers authorized to serve Louisiana.

CF, in the conduct of its general commodities operations, holds authority and performs direct route operations in the transportation of general commodities, including ordnance supplies, within the territorial scope of the American Farm Lines application. The Department of Defense regularly utilizes the service of CF in the movement of ordnance supplies and military impedimenta. In fact, during the period May 1, 1968 through April 30, 1969, the Department of Defense has utilized the services of CF to transport approximately 116,391 short tons of freight, including explosives, ordnance supplies, and military impedimenta. A substantial portion of that freight has been transported within the territorial scope of the American Farm Lines application.

CF has engaged in the transportation of Classes A and B explosives for more than thirty yars. In May, 1967, CF organized a special operating division, called the Arrowhad Division for internal purposes, for the specific purpose of transporting explosives, primarily for the government. The Arrowhead Division is specifically geared to the special circumstances relating to the loading, transportation, and unloading of explosives. The Arrowhead Division conducts a rigorous driver training program in the safe handling and transportation of explosives. The government has used the services of CF extensively in the transportation of explosives. For example, in the 5 month period, September 1, 1968 through February 28, 1969, the government routed via CF 1,099 loads of Classes A and B explosives, having origin and destination within the territorial scope of the American Farm Lines application. CF during the same period transported an additional 748 loads that could be interlined with American Farm Lines if the authority they seek is granted.

All of the above traffic was handled without accident or hazard to the public and, to our knowledge, none of the shipments failed to meet delivery dates specified by the government. None of the shipments reached destinations too late for transshipment with water vessels.

In recent months, there has been a substantial imbalance between available explosives traffic and equipment maintained to handle such traffic. For example, in April 1969, our Arrowhead Division transported 184 loads, of which 86 were within the territorial scope of the American Farm Lines application. During the same period of time, the Division had the equipment capability of transporting 1,047 loads. The reduction in the amount of available explosives traffic has been so great that our Arrowhead Division has recently discontinued long-term leases on 15 tractors previously dedicated to explosives transportation.

We have read the statement of Vincent F. Caputo, William R. Loney, and Max W. Young.

With regard to Mr. Caputo's statement, we, of course do not know the specific traffic with which the Department of Defense is favoring American Farm Lines. However, between key military installations, such as Doyline, Louisiana; Joliet, Illinois; McAlester, Oklahoma; Parsons, Kansas; and Defense, Texas, on the one hand and Bangor, Washington; Port Chicago, California; Herlong, California; and Hawthorne, Nevada, CF has handled all traffic tendered to it in the past year and has equipment capacity to handle at least four times as much traffic as it has recently been tendered.

While CF would prefer to handle such traffic over the shortest available routes for reasons of economy, shorter transit times, and less exposure to safety hazards, we know of no reason that traffic presently handled by American Farm Lines could not be handled within the time limits required by the Department of Defense, with a high degree

of safety. In this regard, we have an application pending before the Interstate Commerce Commission, in MC 42487, Sub 705, for permanent authority, supported by the Department of Defense. We seek to transport Classes A and B explosives between military installations in 41 states. The Department of Defense has not asked us to seek temporary authority for any portion of our permanent authority application. Neither has the Department of Defense requested us to seek temporary authority to obtain shorter routes between military installations that we regularly serve.

There is nothing unusual or demanding in the transportation of canned foodstuffs. Mr. Loney and Mr. Max W. Young fear that reduction in the availability of American Farm Lines srevice would require rail movement of the of California Canners and Growers and Tri-Valley Growers. There is no reason that canned goods cannot be moved by motor common carriers, including CF, in precisely the same quantities and same manner in which American Farm Lines performs service. Neither Mr. Loney nor Mr. Young has requested CF to perform transportation of canned foodstuffs.

EDWARD V. TAYLOR

Subscribed and sworn to before me
this 7th day of July, 1969

JEAN E. BLAND
Notary Public for Oregon

My Commisison expires April 1, 1973

Affidavit

STATE OF CALIFORNIA
COUNTY OF ALAMEDA } ss.

I, Earl J. Brooks, being duly sworn, depose on my oath and say:

I am Director of Commerce of Pacific Intermountain Express Co., one of the plaintiffs herein.

That I make this affidavit in support of a response to a motion by defendants for a stay of the effectiveness of the judgment entered herein by the Court March 26, 1969. The judgment stayed the taking effect of an order of the Interstate Commerce Commission served December 20, 1968 in Docket No. MC-129908 TA.

That for more than twenty-five years Pacific Intermountain Express Co., and its predecessors, have participated in the transportation of general commodities, including Classes A and B explosives, moving on Government bill of lading between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and on the other, points in Washington, California, Nevada, Utah and Arizona. That our company's participation in this traffic runs into millions of dollars per year. Such traffic accounts for a substantial portion of my company's gross revenue and ultimate net revenue and is necessary for the continuation of its present operations.

That for the full year 1968 my company participated in the transportation of 97,135 shipments destined to U. S. Government agencies both in direct single line and in interline service. It accomplished and collected on a total of 51,345 U. S. Government bills of lading covering shipments moving for the account of numerous agencies. These U. S. Agencies included, as examples, General Services Administration, Atomic Energy Commission, Post Office Department, Department of Interior, National Aeronautic and Space Administration, The Mint, Veterans Service Administration, Forest Service, Federal Penitentiaries, Social

Security, Geological Survey, Military Academies, Bureau of Reclamation, Internal Revenue Service, Bureau of Standards, Government Printing Office, Bureau of Mines, Department of Agriculture, Federal Aviation Agency, Bureau of Indian Affairs, Bureau of Immigration and Naturalization, Treasury Department, and the Department of Defense. A substantial portion of the total transportation has been related to military activities and directed by Department of Defense, the only agency supporting the application of American Farm Lines for temporary authority. This affiant would anticipate diversion of thousands of U. S. Government shipments to American Farm Lines, in addition to Department of Defense controlled shipments, that my company enjoys on a daily basis, in the event the authority involved herein is made effective. My company would thereby suffer irreparable injury.

For the purpose of determining the relative position my company has experienced in business from Department of Defense sources, a survey was made by this affiant on the movement of Classes A and B explosives westbound from and through Denver, Colorado, to military installations in California, Utah and Washington. The months January through May were used for the survey which will show a comparison of westbound traffic during each five month period in 1968 and in 1969. During the five month period in 1968 my company transported westbound 199 shipments constituting 708 loads for which it derived a revenue of $969,746.27. During a similar five-month period in 1969 it transported 85 shipments of 288 truckloads with a revenue of $478,674.70. This resulted in a revenue reduction of almost a half million dollars. The Class A and B explosives traffic which originated in the states where American Farm Lines has been most active, namely Illinois, Indiana, Louisiana, Missouri, Oklahoma, and Texas, decreased in the same five-month period from 114 shipments totalling 253 loads and a revenue to affiant's company of $286,358.31 to 3 shipments, making up 9 loads and $11,898.99 in revenues. In the 1968 five-month period my company participated in the movement of Classes A and B explosives loads west-

bound from Denver and originating in the above-named states as follows: McAlester, Oklahoma, 45 shipments, 149 loads; Doyline, Louisiana, 12 shipments, 46 loads; Defense, Texas, 12 shipments, 13 loads; Crane, Indiana, 26 shipments, 26 loads; Savanna, Illinois, 2 shipments, 2 loads; St. Louis, Mo., 2 shipments, 2 loads and Joliet, Illinois, 15 shipments, 15 loads. This totalled, as heretofore stated, 114 shipments for 253 loads. For the same period in 1969 and in the same territory my company received at Denver 3 shipments totalling 9 loads and only from one origin Joliet, Illinois. Affiant believes that his company has rendered a reasonably satisfactory service for the movement of general commodity shipments, including Classes A and B explosives, for the several U. S. Government agencies mentioned herein.

Affiant knows that the Department of Defense has diverted U. S. Government shipments from its service to that of American Farm Lines operating under a claimed exemption as a farm cooperative. In a competitive situation of several carriers, a carrier is not always certain as to which particular competitor provided the service on diverted traffic. However, in my opinion American Farm Lines has benefited from the diversion. Affiant wishes to make reference to Appendix A attached to the affidavit of Wayne S. Green for Garrett Freightlines, Inc. This is a reproduction of Exhibit H-2 in the Interstate Commerce Commission Docket No. MC-C-5835 which reflects the phenomenal growth of U. S. Government business handled by American Farm Lines at the expense of my company and other certificated common carriers. The Department of Defense apparently has designated American Farm Lines as its preferred carrier. The granting to American Farm Lines of temporary authority by the Interstate Commerce Commission, if allowed to stand, would open the gates for further diversion of U. S. Government traffic from my company, limited only to the extent of the applicant's ability to obtain leased independent operators to provide the service. American Farm Lines as a certificated common carrier apparently would abandon its claimed status as a farm

cooperative thereby enabling it to dedicate its entire efforts and its leased vehicles to transportation for all the numerous agencies and Departments of the United States Government. The diversion of U. S. Government shipments to American Farm Lines would thereby accelerate resulting in most serious irreparable injury to my company.

That Pacific Intermountain Express Co. is an authorized long existing motor carrier holding authority issued to it by the Interstate Commerce Commission in its Docket MC-730.

Pacific Intermountain Express Co. maintains terminals at, among other points, Chicago, Illinois; Indianapolis, Fort Wayne, Muncie and South Bend, Indiana; Kansas City and Wichita, Kansas; St. Louis, Missouri; Louisville, Kentucky; Houston, Texas; Fresno, Los Angeles, San Diego, Oakland, San Francisco, San Jose, Sacramento and Stockton, California; Las Vegas and Reno, Nevada; Denver, Colorado; Salt Lake City, Utah; and Spokane, Moses Lake, Wenatchee, Yakima, Pasco, Longview, Tacoma and Seattle, Washington. It has several million dollars invested in terminals and terminal properties, also local and line-haul vehicles, to assure the fulfillment of its common carrier obligation to the general public and to the United States Government. Each of these terminals is staffed with competent personnel, many requiring years of training with substantial investment by my company for such training. Our local and line drivers similarly are subjected to extensive and expensive training procedures particularly to assure proper handling and transportation of U. S. Government traffic, including Classes A and B explosives and bulk commodities in tank vehicles. Affiant has carefully checked the accident records and dangerous cargo damage records of my company for the years 1967, 1968 and year-to-date in 1969. Such examination reveals no reports of accidents, or damage to dangerous articles, including Classes A and B explosives, in connection with U. S. Government shipments during the two and one-half year period. Pacific Intermountain Express Co. has experienced a

satisfactory safety record over a period of many years. It has been given several first place awards nationally for an outstanding safety record. As an example, it received first place for the year 1968 for safe operations of vehicle fleets operating in excess of one hundred million miles per year awarded by American Trucking Association, Inc. Its continuing program of driver training, supervision, maintenance, and safe operation of its vehicles, is carefully designed to assure protection to the public, and to the cargo which it transports.

My company is ready, willing and able to provide additional transportation of all types of traffic, including shipments required to be moved by all the various Agencies and Department of the United States Government on government bills of lading. This of course includes that traffic controlled by the Department of Defense and required for military purposes. It further is ready, willing and able to provide transportation for California Canners and Growers and for Tri-Valley Growers to the extent authorized. The great bulk of grain shipments made by Farmers Grain Cooperative, Ogden, Utah is to Imperial Valley in California. It is not clear to this affiant as to what extent such transportation could or would relate to non-member transportation presently engaged in or contemplated by Defendant, American Farm Lines.

Unless the effectiveness of the judgment herein is allowed to continue in effect my company will suffer irreparable damage from the loss of needed revenues.

EARL J. BROOKS
Earl J. Brooks

Subscribed and sworn to before me this 9th day of July, 1969.

PATRICIA C. YORK
Notary Public for California

PATRICIA C. YORK
My Commission Expires
Feb. 20, 1970

No. 369—October Term, 1969

AMERICAN FARM LINES, *Appellant*,

v.

BLACK BALL FREIGHT SERVICE, ET AL., *Appellees*

Motion for Stay

MR. JUSTICE DOUGLAS, Circuit Justice.

It appearing that the jurisdictional statement filed by appellant presents substantial questions, it is ordered that the final judgment entered by the District Court in this case and the District Court's order of January 6, 1969 staying the effectiveness of the ICC's order of December 19, 1968, be stayed pending disposition of the jurisdictional statement by the Supreme Court.

August 21, 1969

Supreme Court of the United States

No. 369 ---- , *October Term, 19* 69

American Farm Lines,

Appellant,

v.

Black Ball Freight Service, et al.

APPEAL from the United States District Court for the Western District of Washington.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 382 and a total of one hour is allotted for oral argument.

October 27, 1969